



Toll Free: (800) 435-7764  
Fax: (877) 217-1389  
Email: [myclaim@farmersinsurance.com](mailto:myclaim@farmersinsurance.com)  
Please include your claim # on any correspondence  
National Document Center  
P.O. Box 268994  
Oklahoma City, OK 73126-8994

March 29, 2023

GARY NICHOLDS  
PO BOX 4844  
DILLON CO 80435  
Delivered by email to:  
[gary.nicholds@basicproperty.com](mailto:gary.nicholds@basicproperty.com)

RE: Claim Number: 5021498806-1-1  
Insured: Keystone Ranch Hoa  
Policy Number: 0603283051  
Loss Date: 12/26/2022  
RE: Reservation of Rights  
Subject: Important Claim Information

Dear Mr. Nichols:

Please see attached our Reservation of Rights.

I can be reached at [myclaim@farmersinsurance.com](mailto:myclaim@farmersinsurance.com) (please include your claim number in the subject line) or (630) 536-5696. Please contact me if you have any questions or concerns.

Thank you.

Kevin Olson  
Special Field Claims Representative  
(630) 536-5696  
Mid-Century Insurance Company

Email communications are preferred and should be sent to [myclaim@farmersinsurance.com](mailto:myclaim@farmersinsurance.com). If hard copies of communications are required, they should be sent to our National Document Center at P.O. Box 268994, Oklahoma City, OK 73126-8994.

CC: JAMES KINSER  
Enclosure(s):  
General Supporting Documents -



**Mailing Address:**  
National Document Center  
PO Box 268994  
Oklahoma City, OK 73126-8994  
Email: [claimsdocuments@farmersinsurance.com](mailto:claimsdocuments@farmersinsurance.com)  
Fax 877-217-1380

March 10, 2023

SENT VIA CERTIFIED MAIL

Keystone Ranch HOA  
PO Box 38  
Keystone, CO 80435-0038

RE:            Policyholder:            Keystone Ranch HOA  
                 Policy Number:            0603283051  
                 Claim Number:            5021498806-1  
                 RE:                            *Our Lady Of The Ranch LLC v Keystone Ranch HOA Inc*

Dear Mr. Nicholds:

Mid-Century Insurance Company acknowledges receipt of the lawsuit entitled *Our Lady of The Ranch LLC v Keystone Ranch Homeowners Association Inc.* The lawsuit was filed under case number 2023 CV30029 in the District Court of Summit County, Colorado.

We have reviewed the Complaint as well as the policy issued to Keystone Ranch HOA (“Keystone”) by Mid-Century Insurance Company. Based on the information available to us at this time, we will proceed to investigate the claim under a reservation of rights. The reasons for our reservation of rights will be set forth more fully below. Mid-Century will provide a defense to Keystone subject to the terms of the policy set forth below. The defense of Keystone has been referred to Lewis & Brisbois. Handling attorney is Paul Rupprecht who may be reached at (720) 292 2000, or [Paul.Rupprecht@lewisbrisbois.com](mailto:Paul.Rupprecht@lewisbrisbois.com).

The purpose of this letter is to provide you with our coverage analysis and to give you an opportunity to provide us with any additional information, which you feel, may impact our analysis of this claim. We realize the allegations being made may be unsubstantiated. However, we must refer to these allegations as a basis for determining how your policy will apply. Our coverage determination is not intended to imply that any of the allegations are true or have merit.

**Background / Facts**

Based on the information contained in the lawsuit and other information gathered to date, the plaintiff Our Lady of The Ranch LLC (“OLOTR”) is a member of the Keystone Homeowners Association. In the pleadings, OLOTR makes several allegations that Keystone acted wrongfully, and as a result of these wrongful acts, is seeking redress. The allegations contained in the suit include:

- OLOTR has requested certain documents from Keystone and Keystone has refused to provide these documents.

- Certain Board members are serving on the board illegally or otherwise in violation of the governing documents.
- The Board wrongfully approved a \$196,845 expense associated with installing water meters.
- The Board is misleading or otherwise attempting to improperly influence associate members to vote a certain way on the issue of short-term rentals.
- The Board intends to wrongfully charge certain owners additional amounts for water usage.
- The Board is not following proper procedure in noticing meetings of unit owners, including withholding items on the agenda of said meetings
- The board has failed to complete reserve studies.
- The Board is sanitizing, or otherwise misrepresenting facts related to short-term rentals, including information related to short-rentals and water usage and how short-term rentals influence property values.
- Restricting owners from sharing their views related to short-term rentals
- The governing Board has acted wrongfully by not providing notices to members related to budgeting issues and has attempted to assess owners a proposed budget that had not been properly approved by the members.
- The board acted wrongfully by providing voting instructions to owners that are in violation of rules contained in the governing documents. The suit alleges that these actions were an attempt to wrongfully influence members to vote a certain way to decide the issue of allowing, or not allowing short-term rentals within the community.

The suit contains the following Causes of Action:

**Breach of Contract:** In this Cause of Action, OLOTR claims that Keystone breached its obligations under the governing documents by maintaining incomplete and inaccurate documents, allowing Board members to serve on the Board for a time that exceeded term limits, refusing to engage in certain discussions with the plaintiff, misrepresenting the substance of Association meetings, misrepresenting the driving force behind the short term rental amendment initiate, making claims to owners with no facts or legal support for these claims, concealing facts to members related to short-term rentals and water issues, failing to update reserve studies, and otherwise failing to perform its obligations consistent with an implied duty of good faith and fair dealing.

**Declaratory Judgment:** In this Cause of Action, OLOTR states they are entitled to a declaration that all board members who have exceeded their term limits are acting without authority and that any action taken by these members be declared null and void

**Breach of Fiduciary Duty:** In this Cause of Action, OLOTR alleges that the Board breached their fiduciary duty by maintaining incomplete and inaccurate documents, exceeding member term limits, refusing to engage in discussions with OLOTR, misrepresenting the substance of meetings in the minutes, misrepresenting the driving force behind the short-term rental amendment initiative, making claims to the owners with no factual or legal support, concealing facts related to short-term rental issues and failing to complete and update reserve studies.

**Breach of CCIOA:** In this count, OLOTR alleges that the Association failed to comply with the requirements of Colo. Rev Stat. 38-33.3-317 because it does not have complete or accurate records of its governing documents and failed to provide all documents requested by OLOTR within thirty calendar days.

### **Relevant Policy Information**

Mid-Century Insurance Company provided Keystone Ranch HOA with policy number 0603283051 for the policy period January 1, 2022 to January 1 2023. The policy utilized the Preferred Community Association Management Coverage Form J7495-ED1. This coverage form is written with a \$1,000,000 million per claim and aggregate limit and has a prior knowledge date of January 1, 2005. The policy also has a self-insured retention of \$1,000. This coverage form reads, in part:

### **J7495 1st Ed. – Preferred Community Association Management Coverage Form**

#### **Section I – Claims made and Reported Liability Coverages**

#### **A. COVERAGE**

##### **1. Directors And Officers Errors And Omissions Liability**

We will pay “loss” which an insured shall be legally obligated to pay as a result of any “claim” first made against the Insured during the “policy period”, or Extended Reporting Period, if applicable, for a “wrongful act” taking place on or after the retroactive date and prior to the end of the “policy period”. Such “claim” must be reported to us in accordance with B. Notice of Claim. However, this coverage only applies if no “designated insured” had prior knowledge of the facts or circumstances of any “wrongful act” on or prior to the Prior Knowledge Date shown in the Declarations.

All “claims” arising out of “interrelated wrongful acts” will be deemed to be one “claim” and will be deemed to have been made at the time the first of those “claims” is made.

##### **2. Defense And Settlement**

We have the right and duty to defend the insured, through counsel of our choice, against any “suit” to which this insurance applies. We have the right to investigate any report of a “wrongful act”, and may, at our discretion, settle any “claim” for a “wrongful act” to which this insurance applies. Our obligation to defend any “Suit” ends once we have

paid our applicable Limit of Liability. No other obligation to pay sums or perform acts or services is covered unless explicitly provided for under 4. Supplementary Payments. No insured will, except at that insured's own cost, voluntarily make any payment, assume any obligation, or incur any expense, without our written consent.

\*\*\*\*\*

We now refer you to the Exclusions Section of the coverage form, which reads in part as follows:

#### **D. EXCLUSIONS**

1. This insurance does not apply to "claims":
  - a. Relating to or arising from the insured gaining in fact profit or financial advantage to which such insured was not legally entitled.

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#### **2 Directors and Officers Errors and Omissions Liability Exclusions**

- a. Fraud, collusion, dishonesty, criminal or malicious acts committed by or at the direction of an insured, if a final adjudication established such fraud, collusion, dishonesty, criminal or malicious acts, and then only as to such insured. The fraud, collusion, dishonesty, criminal or malicious "wrongful acts" of an insured shall not be imputed to any other insured for purposes of this exclusion.

\*\*\*\*\*

We now refer you to the definitions section of the coverage form.

#### **I. DEFINITIONS**

3. "Claim" means:
  - a. A written demand for monetary damages or non-monetary relief;
  - b. A civil "suit" seeking monetary damages or non-monetary relief;
  - c. A formal administrative or regulatory proceeding, formal investigative order or similar document, including a filing seeking a Right to Sue an insured; or
  - d. The filing of any complaint against an insured with the EEOC, DFEH, or any similar administrative court or organization,against an insured for a "wrongful act".

However, "claim" does not include any criminal proceeding or investigation.

11. "Loss" means the total amount which the insured become legally obligated to pay as damages, judgments or settlements on account of all "Claims" made against the insured for "wrongful acts" to which this insurance applies. "Loss" includes prevailing party attorney fees, regardless of whether they are deemed to be damages or costs, but only to the extent the prevailing party attorney fees are for "wrongful acts" to which this insurance otherwise applies.

However, "loss" does not include"

- b. Taxes, fines, penalties or liquidated damages;
  - c. Any non-monetary relief, including but not limited to the cost to comply with any injunction, order or agreement to provide such relief;
20. "Wrongful act" means any actual or alleged act, error, omission, misstatement, misleading statement, neglect, or breach of duty committed or allegedly committed by any insured arising solely from their responsibilities for the insured community association. "Wrongful act" also includes "employment practices wrongful acts" and "third party discrimination"

### **Coverage Discussion/Analysis**

The policy utilizes a Condominium Liability Coverage Form, version E3314 Ed3. The allegations forwarded by the complainant do not meet any of the definitions to trigger the insuring agreement of the Condominium Liability Coverage Form. If you would like further explanation of our analysis of coverage under this form, please advise as such

### **Specific Reservations for the named insured Keystone Ranch HOA under the Preferred Community Association Management Coverage Form**

The damages sought by the plaintiff include demands for injunctive (non-monetary) relief. Any such award for injunctive relief or otherwise a claim by Keystone for expenses to comply with injunctive relief would not qualify as a "loss" and therefore not be covered by the policy. Similarly, any damages awarded to the plaintiff that are a tax, fine or penalty would not be covered.

Any damages of any kind awarded to the plaintiff arising out of fraud, collusion or dishonesty would not be covered by the policy pursuant to exclusion 2 (a) cited above.

Finally, any monetary damages awarded due to the insured having obtained a profit or financial advantage to which they were not entitled would not be covered due to exclusion 1(a) cited above.

### **Conclusion**

Subject to the Reservation of Rights articulated above, we will continue our investigation of this matter and provide a defense to Keystone. You may at your own expense, seek outside counsel regarding uncovered allegations and/or damages. Please be assured that whether you engage your own counsel, we will defend this action.

By undertaking the investigation of this matter, we do not waive any contractual rights or future rights which may become evident. We reserve the right to rely on any terms, conditions, exclusions or limitations of the contract or any other grounds which may be found to limit or preclude coverage. We reserve the right to modify our coverage determination if additional information is developed that warrants modification.

The position outlined above is based upon our investigation and information secured through this date. If you have any additional information regarding this matter that you would like us to consider, or if an amended lawsuit is filed in relation to this matter, please direct it to my attention for review and consideration. Any additional information received will be promptly reviewed.

Should you have any questions regarding this matter or if you are served with an amended complaint, please contact me at (630) 536-5696.

Thank you for your time and attention to this matter.

Sincerely,  
Mid-Century Insurance Company



Kevin Olson  
Senior Commercial Claims Representative  
Business Insurance Liability Claims-Central East Zone

cc: Nick Strong [Nick@kinserinsurance.com](mailto:Nick@kinserinsurance.com)  
Seth Murphy [Seth.Murphy@practicallawyer.com](mailto:Seth.Murphy@practicallawyer.com)  
Paul Rupprecht [Paul.rupprecht@lewisbrisbois.com](mailto:Paul.rupprecht@lewisbrisbois.com)