



February 6, 2026

**Via Email Only, Read Receipt Requested**

Kelly Marion, Clerk  
Saline Township  
salinetownship@gmail.com

Fred Lucas, Attorney  
Saline Township  
fred@castleberrylucas.com

Claim No.: MTP-24-15348  
Insured: Saline Township  
Program: Tokio Marine - HCC  
Carrier: Michigan Township Participating Plan  
Policy No.: M24MTP81285-05  
Effective Date: December 1, 2024 to December 1, 2025  
Claimant: RD Michigan Property Owner I, LLC, et al.

Dear Clerk Marion and Attorney Lucas:

Tokio Marine HCC - Public Risk Group administers insurance claims on behalf of Michigan Township Participating Plan (“MTPP”) for the above-referenced policy issued to Saline Township (“Township”). On September 19, 2025, we received a lawsuit, captioned *RD Michigan Property Owner I, LLC; Feldkamp Siblings, LLC; Dennis Finkbeiner; Lynn Ellen Finkbeiner; Wilkin Farm Properties I, LLC; Dennis C. Wilkin; and Alice M. Wilkin v. Saline Township*, Case No. 25-001577-CZ, filed with the State of Michigan, in the Circuit Court for Lake County on September 12, 2025 (the “Lawsuit”).

We are directing this letter to you as the Township’s representative authorized to receive this coverage correspondence. If you are not authorized by the Township to receive this correspondence, please let us know immediately. **Please also provide a copy of this correspondence to any other necessary Township personnel.**

**Coverage Summary**

The purpose of this correspondence is to provide you with MTPP’s position with respect to the Lawsuit. We have reviewed whether MTPP has a duty to defend or indemnify the Township under the Public Officials Liability Coverage Form of the above-referenced package policy issued to the Township by MTPP. **As detailed more fully below, there is no coverage for defense or indemnity of the Lawsuit under the Township’s Policy because the Lawsuit seeks only non-monetary relief. However, MTPP will provided limited reimbursement of defense costs of up to \$250,000 per SUIT and \$250,000 in the aggregate for the POLICY PERIOD for reasonable costs and fees incurred on or after the date of notification of the Lawsuit (September 19, 2025) pursuant to the DEFENSE EXPENSE FOR NON-MONETARY RELIEF SUITS ENDORSEMENTS of the Public Officials Liability Coverage Form for the December 1, 2024 to December 1, 2025 POLICY PERIOD, subject to the reservation of rights stated herein.**

Please note that the discussion below is based on information provided to date and that the following is subject to change upon receipt of additional information/developments. MTPP expresses no opinion on the truth of the allegations asserted in the materials provided.

### **Defense Assignment**

Because MTPP has no duty to defend the Township with respect to the Lawsuit, MTPP will not retain counsel on behalf of the Township. Rather, the Township must protect its own interests, at its own expense. Failure to do so could result in a judgment. It is our understanding that the Township's attorney, Fred Lucas, has been defending the Township with respect to the Lawsuit. If this is incorrect, please notify the undersigned.

### **Claim Summary**<sup>1</sup>

According to the Lawsuit, the Plaintiffs submitted to the Township an Application for Conditional Rezoning regarding their property in July 2025, in order to develop a data center on the subject property. The Plaintiffs allege that, on August 12, 2025, the Township Planning Commission recommended that the Township Board deny the rezoning request and that the Township Board formally denied the rezoning request on September 10, 2025.

The Lawsuit asserts three causes of action: Count I alleging Exclusionary Zoning, Count II for Declaratory Relief, and Count III alleging Violation of Due Process of Law. Specifically, Count I alleges the Township has no land identified for the Plaintiff's proposed use, in violation of the Michigan Zoning Enabling Act. It is further stated that the Plaintiffs' proposed use (a Data Center) is a legitimate use as encouraged by the State and County and that the Township has a designation that would allow the proposed use, but no land identified for such use. Count II alleges the Township erred in denying Plaintiffs' re-zoning request, inconsistent with the standards laid out in the Township's Zoning Ordinance, resulting in an exclusion of a legitimate land use. Count III alleges the Township's declination of the re-zoning request deprived Plaintiffs of an economically viable purpose, and was arbitrary capricious and unreasonable use of police power. It is further argued that such denial has denied Plaintiffs' procedural and substantive due process rights.

Via the Lawsuit, the Plaintiffs seek declaratory and injunctive relief and request that the Court "determine, declare and adjudge" that the Township's actions constitute exclusionary zoning and/or a violation of state and local laws and a violation of Plaintiffs' constitutional rights; that the Plaintiffs have been denied any reasonable and/or economically viable use of their property; and that the Township's actions constitute arbitrary, capricious and unreasonable exclusions of legitimate land uses and/or bore no reasonable relationship to legitimate governmental objectives. The Plaintiffs further request that the Court issue an injunction preventing the Township from interfering with the proposed use of the property for a data center.

It is our understanding that the parties have negotiated a resolution of this matter and that a consent judgment was entered by the Court dismissing the Lawsuit in October 2025.

### **Insurance Policy**<sup>2</sup>

The Township is the Named Insured under Policy Number M24MTP81285-05 for the Policy Period from December 1, 2024 to December 1, 2025 (the "Policy"). Coverage is reviewed relevant to the occurrence-based Public Officials Liability Coverage Form<sup>3</sup> (the "POL Form") of the Policy which has a limit of \$5,000,000 per Public Officials Wrongful Act, with no annual aggregate limit, and no deductible.

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<sup>1</sup> The information contained herein is obtained from the Lawsuit. We recognize that allegations made in the Lawsuit may be unsubstantiated contentions at this time. Nothing in this letter is intended to suggest or imply that these allegations have any legal or factual merit.

<sup>2</sup> This matter does not appear to implicate in any manner the Commercial General Liability, Employee Benefits, Employment Practices, Commercial Property, Equipment Breakdown, Commercial Inland Marine, EDP, Commercial Crime, Public Officials Liability, or Commercial Auto Coverage. Parts. If you disagree or require a more detailed explanation as to why there is no coverage available under these Coverage Parts, please let us know. If we do not hear further from you, we will presume that you agree that this matter does not implicate any of these Coverage Parts. MTPP reserves its rights under all Coverage Parts and waives none.

<sup>3</sup> POOPH0001 (1-12).

The POL Form also has a **NON-MONETARY SUIT DEFENSE COSTS ENDORSEMENT**<sup>4</sup> which provides limited reimbursement for defense costs and fees of up to \$250,000 per **SUIT** and \$250,000 in the aggregate for the **POLICY PERIOD**. The Township does not have any excess or umbrella coverage. MTPP reserves the right to analyze coverage and to deny defense and/or indemnity coverage under a different policy if additional information is obtained warranting such analysis.

This letter does not quote all terms, conditions, and definitions of the Policy that may be relevant to this matter. Instead, we highlight certain Policy provisions, but by not including other Policy provisions, we do not mean to convey that those provisions may not be relevant to the coverage analysis. As a result, you should read this letter in conjunction with the full terms, conditions, and definitions of the Policy.

### **Coverage Position**

As an initial matter, the POL Form provides coverage on an occurrence-basis. The Insuring Agreement of the POL Form provides that MTPP “will pay on behalf of the **INSURED** all **LOSS** that the **INSURED** shall be legally obligated to pay resulting from a **WRONGFUL ACT** to which this insurance applies. The **WRONGFUL ACT(S)** must occur within the **POLICY TERRITORY**. This insurance applies only to **WRONGFUL ACT(S)** that take place during the **POLICY PERIOD**. **All claims for damages causing loss to the same person or organization as a result of WRONGFUL ACT(S) will be deemed to have occurred at the time the first WRONGFUL ACT(S) had allegedly been committed by the INSURED(S).**”<sup>5</sup>

Pursuant to the **DEFENSE AND SUPPLEMENTARY PAYMENTS** section of the Policy, it goes on to state, “**WE** shall have the right and duty to select counsel and to defend any **SUIT** against the **INSURED** seeking damages for **LOSS** even if any of the allegations of the **SUIT** are groundless, false or fraudulent. **WE** shall have the right to assign counsel to defend any such **SUIT** against the **INSURED**, and the **INSURED** agrees and consents to **OUR** exercise of that sole right. However, **WE** will have no duty to defend the **INSURED** against any **SUIT** seeking damages for **WRONGFUL ACT(S)** to which this insurance does not apply. **WE** may make such investigation of any **SUIT** as **WE** deem expedient.”<sup>6</sup>

The Policy further states, “**WE** shall not be obligated to pay any claim or judgment or to defend any **SUIT** or pay any fees, costs or expenses after the applicable limit of **OUR** liability has been exhausted by payment of judgments or settlements.”<sup>7</sup>

The term **LOSS** means “any compensatory monetary amount, including punitive damages where permitted by law, for which the **INSURED(S)** is legally obligated to pay as a result of **WRONGFUL ACTS(S)** covered by this policy and shall include, but not be limited to, judgments and settlements. **LOSS** shall not include: **1.** Criminal or civil fines or penalties; **2.** Taxes; **3.** The salaries, wages or overhead expenses of the Director, Officers, Trustees, Staff members, or other members of the **NAMED INSURED**; **4.** Matters that may be deemed uninsurable under the law pursuant to which this policy shall be construed.”<sup>8</sup>

**SUIT** means “a civil proceeding in which monetary **LOSS** is alleged because of a **WRONGFUL ACT** to which this insurance applies. **SUIT** includes an arbitration or any other alternative dispute resolution proceeding in which such **LOSS** is claimed and to which the **INSURED** must submit or does submit with **OUR** consent. **SUIT** does not include or mean an administrative hearing or procedure.”<sup>9</sup>

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<sup>4</sup> POCPLH0027 2011.

<sup>5</sup> POOPLH0001 (1-12), **INSURING AGREEMENTS**.

<sup>6</sup> POOPLH0001 (1-12), **DEFENSE AND SUPPLEMENTARY PAYMENTS**.

<sup>7</sup> POOPLH0001 (1-12), **DEFENSE AND SUPPLEMENTARY PAYMENTS**.

<sup>8</sup> POOPLH0001 (1-12), **SECTION I – DEFINITIONS**.

<sup>9</sup> POOPLH0001 (1-12), **SECTION I – DEFINITIONS**.

**WRONGFUL ACT** is defined to mean “[a]ny alleged or actual: **1.** Error, misstatement, misleading statement, omission, neglect or breach of duty of the **INSURED**; or **2.** Violation of any civil rights protected by federal law; or **3.** Violation of any state civil rights law; that arises out of the discharge of duties for the **NAMED INSURED**, individually or collectively.”<sup>10</sup>

In the Lawsuit, the Plaintiffs allege that the Township’s denial of their rezoning request on September 10, 2025 violated state and local law. Pursuant to the terms of the occurrence-based POL Form, the first alleged **WRONGFUL ACT(S)** ... committed by the **INSURED(S)**” appears to have occurred on or after September 10, 2025, during the December 1, 2024 to December 1, 2025 **POLICY PERIOD**. MTPP reserves the right to analyze and/or deny coverage under a different **POLICY PERIOD** as appropriate.

At this time, the allegations asserted by Plaintiffs within the Lawsuit appear to meet the definition of a **WRONGFUL ACT** as defined in the POL Form. However, MTPP reserves the right to withdraw or deny coverage for any allegation(s) that do not constitute a **WRONGFUL ACT**. However, the Lawsuit seeks only equitable relief, and no monetary damages are sought against the Township. As such, there is no **LOSS** claimed, and the Insuring Agreement of the POL Form is not met. **Therefore, MTPP has no duty to defend or indemnify the Township with respect to the Lawsuit. Furthermore, the Lawsuit does not meet the definition of SUIT set forth in the POL Form because it does not allege monetary LOSS. Accordingly, MTPP has no duty to defend the Township with respect to the Lawsuit.**

Further, **Exclusion 9.** provides that “[t]his insurance does not apply to and **WE** shall not be obligated to make any payment nor to defend any **SUIT** against the **INSURED**:<sup>11</sup> “Resulting in any **SUIT** seeking relief or redress in any form other than compensatory **LOSS**, nor shall **WE** have any obligation to indemnify the **INSURED** for any costs, fees including attorney fees, costs or expenses that the **INSURED** shall become obligated to pay as a result of any adverse judgment for injunctive or declaratory relief; however, **WE** will afford defense to the **INSURED** for such **SUIT**, if not otherwise excluded, where payment for compensatory **LOSS** is requested.”<sup>12</sup> Therefore, even if the Insuring Agreement was met (it is not), **Exclusion 9.** would exclude coverage for the Lawsuit, which seeks only equitable relief and does not seek an award for compensatory **LOSS** from the Township. **As a result, MTPP has no duty to defend or indemnify the Township with respect to the Lawsuit because of Exclusion 9. of the POL Form.**

However, the **NON-MONETARY SUIT DEFENSE COSTS ENDORSEMENT** provides limited reimbursement up to \$250,000 per **SUIT** for “reasonable costs and fees incurred in the defense of such **SUITS.**” It is pursuant to this endorsement that MTPP will reimburse the Township for the reasonable cost of defense of the Appeal, subject to the \$250,000 per **SUIT** and \$250,000 in the aggregate.

**To seek reimbursement, you will need to submit the applicable invoices and proof of payment for reasonable costs and fees incurred on or after the date of notification of the Lawsuit (September 19, 2025) in the defense of the Lawsuit. Please note that these reimbursement payments will cease once the \$250,000 per SUIT limit for this coverage extension is exhausted by payment of defense expenses.** After the limits of the **NON-MONETARY SUIT DEFENSE COSTS ENDORSEMENT** are exhausted, the Township will be responsible for payment of all costs and fees related to the Lawsuit.

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<sup>10</sup> POOPLH0001 (1-12), **SECTION I – DEFINITIONS.**

<sup>11</sup> Preamble to all exclusions under **SECTION II – COVERAGES, EXCLUSIONS.**

<sup>12</sup> **SECTION II – COVERAGES, EXCLUSIONS, ¶9.**

Notwithstanding the above, MTPP reserves its rights regarding a number of other policy provisions noted below (which is not intended to be an exhaustive list).

Pursuant to **Exclusion 2.** of the POL Form, “[t]his insurance does not apply to, and **WE** shall not be obligated to make any payment nor to defend any **SUIT** against the **INSURED**:<sup>13</sup> [b]rought about or contributed to by fraud, dishonesty or bad faith of an **INSURED**.”<sup>14</sup> Accordingly, MTPP reserves the right to deny defense and/or indemnity coverage to the extent that **Exclusion 2.** is applicable.

**Exclusion 3.** of the POL Form provides that “[t]his insurance does not apply to and **WE** shall not be obligated to make any payment nor to defend any **SUIT** against the **INSURED**:<sup>15</sup> [a]rising from the deliberate violation of any federal, state or local statute, ordinance, rule or regulation committed by or with the knowledge and consent of the **INSURED**.”<sup>16</sup> To the extent the Township deliberately violated any federal, state or local statute, ordinance, rule or regulation related to this matter, MTPP reserves the right to deny defense and/or indemnity coverage pursuant to **Exclusion 3.**

We also draw your attention to **Exclusion 10.** of the POL Form, as modified by the **PRIVATE PROPERTY USE RESTRICTION SUBLIMIT ENDORSEMENT**, which provides that “[t]his insurance does not apply to and **WE** shall not be obligated to make any payment nor to defend any **SUIT** against the **INSURED**: [a]lleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving the taking, partial taking, temporary taking, control of property or resulting diminution of property value by any means, method or proceeding, including but not limited to, zoning decisions, building code decisions, and permitting decisions, however characterized, and public officials’ acts that involve or are in any way related to, the principles of eminent domain, condemnation, inverse condemnation, adverse possession, right of prescription or dedication by adverse use or zoning, building code or permitting decisions.”<sup>17</sup>

However, the **PRIVATE PROPERTY USE RESTRICTION SUBLIMIT ENDORSEMENT** further provides that “[t]his exclusion “does not apply to the **PRIVATE PROPERTY USE RESTRICTION** sublimit for this coverage shown under Limits of Liability on the Declaration Page. For any such specific claims or **SUITS** for **LOSS** resulting from the **INSURED** controlling or restricting the use of private property, while not taking legal ownership of said property, we will cover such specific claims or **SUITS** subject to the sublimit and other policy terms and conditions. This sublimit will be eroded by **LOSS ADJUSTMENT EXPENSE** as well as any and all other payments made pursuant to the Defense and Supplementary Payments provision of this policy.”<sup>18</sup> Because the Lawsuit involves the control of property via the Township’s denial of the Plaintiffs’ rezoning request, MTPP reserves all rights with respect to **Exclusion 10.** and the **PRIVATE PROPERTY USE RESTRICTION SUBLIMIT ENDORSEMENT**. Because coverage is otherwise excluded, this sublimit is not available.

### **Conclusion**

**In summary, we are providing reimbursement of defense costs only to the Township with respect to the Lawsuit up to the \$250,000 limit per suit and \$250,000 annual aggregate limit under the NON-MONETARY SUIT DEFENSE COSTS ENDORSEMENT and pursuant to the terms and conditions discussed herein.**

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<sup>13</sup> Preamble to all exclusions under **SECTION II – COVERAGES, EXCLUSIONS.**

<sup>14</sup> **SECTION II – COVERAGES, EXCLUSIONS, ¶2.**

<sup>15</sup> Preamble to all exclusions under **SECTION II – COVERAGES, EXCLUSIONS.**

<sup>16</sup> **SECTION II – COVERAGES, EXCLUSIONS, ¶3.**

<sup>17</sup> POOPLH0031 1017, **PRIVATE PROPERTY USE RESTRICTION SUBLIMIT ENDORSEMENT.**

<sup>18</sup> POOPLH0031 1017, **PRIVATE PROPERTY USE RESTRICTION SUBLIMIT ENDORSEMENT.**

Please be advised that the above is based upon MTPP's present understanding of this matter. The determination set forth herein is based only upon the facts and information as presented to us to date and should not be construed as applicable to a new claim or an amendment to this claim. MTPP's right to have notice of either situation is reserved as are the notice conditions of the policy of insurance.

MTPP specifically reserves the right to afford or deny coverage based upon grounds other than those expressly set forth in this letter and to supplement and/or amend this letter to address additional coverage issues as they may arise, based upon all the provisions, terms, conditions, exclusions, endorsements and definitions found in the Policy as well as any additional facts which may come to the attention of MTPP. The failure of this correspondence to reference specific terms, conditions, definitions or exclusions of the Policy shall not constitute a waiver of any rights or coverage defenses available to USSIC and does not preclude MTPP's ability to assert them in the future whether those rights are presently identifiable or later identified. MTPP specifically reserves all rights, remedies or defenses belonging to it under the Policy, including the right to deny coverage, withdraw from the defense and recoup amounts paid in the event it is determined that coverage hereunder does not apply. We understand and appreciate that the rights of the Insured are equally reserved.

MTPP trusts that you understand its coverage position. If you have any questions or comments, please do not hesitate to contact us. Similarly, if you believe that MTPP is incorrect in any respect or if you have additional information which you believe may affect the Company's position, please do not hesitate to contact the undersigned. MTPP is prepared to consider additional information and reassess its position should the circumstances so warrant.

If you have any questions regarding this letter, please feel free to contact me at (586)419-7773 or [sspigno@tmhcc.com](mailto:sspigno@tmhcc.com).

Sincerely,  
Tokio Marine HCC – Public Risk Group

A handwritten signature in black ink that reads "Sarah M. Spigno". The signature is written in a cursive, flowing style.

Sarah M. Spigno, Esq.  
Claims Manager

cc: Megan West, Acrisure Midwest (*via email to [mwest@acrisure.com](mailto:mwest@acrisure.com)*)