



First American  
Title Insurance Company  
CLAIMS SERVICES

December 23, 2020

Sent Via email [Oswald@ruppbaase.com](mailto:Oswald@ruppbaase.com)

Phillip A. Oswald, Esquire  
Rupp Baase Pfalzgraf Cunningham LLC  
25 Walton Avenue  
Saratoga Springs, NY 12866

Claim No.: [REDACTED]  
Insured: [REDACTED]  
Property: [REDACTED] (161.-1-22.1)

Dear Attorney Oswald:

I write in response to the claim submission to First American Title Insurance Company (“the Company”) on behalf of [REDACTED] (“the Insured”) under Owner Policy No. [REDACTED] [REDACTED] (“the Policy”) issued August 11, 2017 in connection with the Insured’s purchase of several parcels including the property referenced above (“the Property”).

The claim is a tender of defense of the action captioned [REDACTED] [REDACTED] (“the Litigation”). Plaintiff [REDACTED] [REDACTED] is the owner of [REDACTED] (“the [REDACTED] Property”), a landlocked parcel adjacent to the Property. In the Litigation, [REDACTED] claims a right of access over the Property as well as over land owned by [REDACTED], the other defendants, to get to [REDACTED] Road. The Complaint filed in the Litigation asserts claims of: a) easement by necessity dating back to the conveyance of the [REDACTED] property by a common owner in the back chain (First Cause of Action); b) easement by implication dating back to the conveyance of the [REDACTED] property by a common owner in the back chain (Second Cause of Action); c) easement by prescription based on the use of a former logging road to access [REDACTED] [REDACTED] for over 10 years (Third Cause of Action); and d) injunction against interference with access for the [REDACTED] Property (Fourth Cause of Action).

[REDACTED] claims of an easement right over the Property triggers coverage under Covered Risk No. 2 of the Policy as he is asserting an encumbrance on the title to the Property. Therefore, the Company accepts coverage for the Litigation subject to a reservation of rights as set forth below.

The Company reserves the right to assert certain defenses under the Policy, including but not limited to the following:

#### EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

...

3. Defects, liens, encumbrances, adverse claims, or other matters

(a) created, suffered, assumed, or agreed to by the Insured Claimant;

...

(d) attaching or created subsequent to Date of Policy . . . .

### EXCEPTIONS FROM COVERAGE

This Policy does not insure against loss or damage, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

...

1 (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance, including but not limited to, easements, claims of easements, . . . affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by Public Records.

If the Company later determines that a survey of the Property would have shown the easement being used by ██████ or if the Litigation results in a determination that the Insured allowed ██████ to utilize the easement during a portion of the 10-year period necessary for the claim of easement by prescription or that the easement otherwise attached after the Date of Policy, the Company reserves the right to deny coverage under the above provisions of the Policy.

In fulfillment of its obligations under the Policy and subject to the reservation of rights set forth above, the Company has retained attorney Mark A. Lebowitz, Esquire to defend the Insured in the Litigation.

While Attorney Lebowitz will be representing the Insured's interest alone in this matter and will be expected to maintain confidentiality of all privileged communications with the Insured, Attorney Lebowitz has been requested to provide the Company with copies of all court documents filed and any non-privileged communications. Attorney Lebowitz will also provide the Company with regular updates on the status of matters covered by the Policy. Please note that the Insured will need to be responsive to requests made by Attorney Lebowitz and to fully cooperate in any litigation.

Attorney Lebowitz's contact information is:

Mark A. Lebowitz, Esquire  
Bartlett, Pontiff, Stewart & Rhodes, P.C.  
P.O. Box 2168  
One Washington Street  
Glens Falls, NY 12801  
Direct Dial Phone (518) 832-6439  
Direct Dial Fax (518) 824-1039  
Email [mal@bpsrlaw.com](mailto:mal@bpsrlaw.com)

The Company's acceptance of coverage is based solely upon the facts presented to it, and the current state of the law governing the matter. Should the circumstances leading to acceptance of this claim change, such as through amendment of the pleadings, discovery of additional facts or information during the course of the litigation, or, through a change in applicable law, the Company may modify its coverage determination at that time.

Although the Company has accepted this claim, the Company has other options to resolve a claim under this Policy and may subsequently decide to exercise its options. Those options include, but are not limited to, the option to pay or tender the amount of insurance, or to pay or settle with either the insured or a third party. In addition to the options set forth in the conditions of the Policy, the Company may take any action that it deems appropriate to resolve the claim in order to reduce loss or damage to the Insured. The Company specifically reserves its rights to exercise these options in accordance with the terms and conditions of the Policy.

If you have any questions about the content of this letter or regarding coverage under the Policy, please contact me.

Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Brian R. Barlow".

Brian R. Barlow, Esquire  
Senior Claims Counsel  
bbarlow@firstam.com  
610-233-4131