IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Appeal No. 123,808

COMMUNITY RESOURCING INCORPORATED d/b/a
OUR DAILY BREAD FOOD AND RESOURCE CENTER,

Plaintiff/Respondent,

vs.

BERKSHIRE HATHAWAY SPECIALTY INSURANCE
and MESSER-BOWERS COMPANY,

Defendants,

and

CHRIS HICKMAN, and HAAG ENGINEERING COMPANY,

Defendants/Petitioners.

REPLY OF THE DEFENDANTS AND PETITIONERS, CHRIS HICKMAN AND HAAG ENGINEERING COMPANY, TO RESPONSE BRIEF OF PLAINTIFF AND RESPONDENT TO BRIEF IN CHIEF OF THE DEFENDANTS AND PETITIONERS

**ACTION ON POLICY OF PROPERTY INSURANCE
ALLEGING TORTIOUS INTERFERENCE WITH CONTRACT
AND CIVIL CONSPIRACY AGAINST THIRD PARTIES
DISTRICT COURT OF PAYNE COUNTY, CASE NO. CJ-2025-128
THE HONORABLE MICHAEL KULLING, DISTRICT JUDGE, PRESIDING**

Respectfully submitted,

SECREST, HILL & SECREST
JAMES K. SECREST, II, OBA #8049
EDWARD J. MAIN, OBA #11912
7134 South Yale, Suite 900
Tulsa, OK 74136
(918) 494-5905
(918) 494-2847 Facsimile
e-mail: jsecrest@secresthill.com
emain@secresthill.com
ATTORNEYS FOR PETITIONERS,
CHRIS HICKMAN and
HAAG ENGINEERING COMPANY

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IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

COMMUNITY RESOURCING INCORPORATED d/b/a OUR DAILY BREAD FOOD AND RESOURCE CENTER, Plaintiff/Respondent, v. BERKSHIRE HATHAWAY SPECIALTY INSURANCE, MESSER-BOWERS COMPANY, Defendants and, CHRIS HICKMAN, and HAAG ENGINEERING COMPANY, Defendants/Petitioners.	)	Supreme Case No. 123,808 Underlying Case: Payne County, CJ-2025-128 Judge Michael Kulling

REPLY OF THE DEFENDANTS AND PETITIONERS, CHRIS HICKMAN AND HAAG ENGINEERING COMPANY, TO RESPONSE BRIEF OF PLAINTIFF AND RESPONDENT TO BRIEF IN CHIEF OF THE DEFENDANTS AND PETITIONERS

Come now, the Petitioners and Defendants Chris Hickman and Haag Engineering Company (hereinafter "Haag Petitioners"), and submit their Reply to the Response Brief of the Plaintiff and Respondent, Community Resourcing, Inc. d/b/a Our Daily Bread Food and Resource Center (hereinafter, "Community"), to the Haag Petitioners' Brief In Chief. In further support of their argument that Community's allegations should have been dismissed for failure to state a claim upon which relief may be granted, the Haag Petitioners would show the Court as follows:

I. Timeliness of Reply

Community's Response Brief was filed with this Court May 7, 2026. The Haag Petitioners Reply would be due five days later. Rule 1.55, Rules of the Oklahoma Supreme Court. Because

the period to file a Reply is less than 11 days, intervening Saturdays and Sunday are not included in computing the five-day period. Okla. Sup. Ct. R. 1.3; 25 O.S. 2021, § 82.1(A). Accordingly, this Reply is timely filed with this Court.

II. The Haag Petitioners Basic Argument

The Haag Petitioners have established in this interlocutory appeal, that Community's claims against them should have been dismissed for failure to state a claim upon which relief may be granted. 12 O.S. 2021, § 2012(B)(6). The Haag Petitioners argument is very simple, as is the basis for Community's claim against them:

> Community's property . . . was damaged in a hail storm on May 5, 2022. Community submitted a claim under its property insurance policy, . . . issued by Defendant, Berkshire Hathaway Specialty Insurance ("Berkshire") . . . Following a prolonged and disputed adjustment process, . . . Berkshire retained Haag Engineering to conduct a further inspection of Community's property, which Chris Hickman performed on March 8th and April 12th, 2024.

Community's Response Brief, pp 1-2; *compare*, ROA, Doc. 2 Amended Petition, ¶¶8-12, 14, 33, 39 & 64, pp. 2-3, 7-8, 12, Record at 14-15, 19-20, 24. These are the basic relationships, as Community alleged and represents on appeal, which further establish that The Haag Petitioners had no direct relationship with Community; "they were not parties to Community's policy issued by Berkshire", and that the only involvement of the Haag Petitioners was their agreement with Berkshire to inspect Community's property, and report back to Berkshire. ROA, Doc. 2, Amended Petition, ¶¶33, 35, 39, 63 & 64, pp. 7-8, 12, Record at 19-20, 24. Community's allegations regarding the Haag Petitioners are entirely limited to their inspection of Community's property and their reporting their findings to Berkshire. Although Community makes allegations and advances arguments regarding the Haag Petitioners' relation with Berkshire, they do not alter the basic fact that their claim is entirely based upon that relationship. The nature of the relationships

among Community, Berkshire and the Haag Petitioners, and the absence of any direct relationship of the Haag Petitioners to Community, except indirectly pursuant their limited role for Berkshire, determines whether Community has a cause of action it may assert against the Haag Petitioners. Controlling and precedential case law directly addressing relationships of this sort establish that Community does not have a claim it may pursue against the Haag Petitioners. *Christian v. American Home Assurance Co.*, 1977 OK 141, ¶25, 577 P.2d 899, 904; *Timmons v. Royal Globe Insurance Co.*, 1982 OK 97, ¶¶16-17, 653 P.2d 907, 912-913; *Trinity Baptist Church v. Brotherhood Mutual Insurance Services, LLC*, 2014 OK 106, ¶¶18, 26, 28, 31 & 34, 341 P.3d 75, 82, 85-87.

Community argues it did not assert "bad faith" claim against the Haag Petitioners, but that is irrelevant. Any cause of action it may have depends upon its factual allegations, not the theory of liability invoked, or not invoked. *Chandler v. Denton*, 1987 OK 38, ¶12, 741 P.2d 855, 862-863; *Wofford v. Eastern State Hospital*, 1990 OK 77, ¶10, 795 P.2d 516, 519; *Gens v. Casady School*, 2008 OK 5, ¶9, 177 P.3d 565, 569; *Wilson v. Harlow*, 1993 OK 98, ¶25, 860 P.2d 793, 800; *Arvest Bank v. SpiritBank*, 2008 OK CIV APP 55, ¶20, 191 P.3d 1228, 1233.

Community disputes the Haag Petitioners' discussion of *Henderson v. Day Engineering Consultants*, 2024 OK CIV APP 25, 560 P.3d 684, but that opinion actually supports the Haag Petitioners' argument. Community's Answer Brief, p. 8. In *Henderson*, the plaintiff, an apartment complex, sustained damage to one of three buildings as a result of an automobile impact. The plaintiff's property insurer retained Day Engineering to evaluate the damage to that single building. However, the representative of Day Engineering "identified various unsafe and dangerous conditions in the other two buildings" and then "reported the unsafe conditions he observed to the City of Oklahoma City." *Henderson*, ¶4, 560 P.3d at 686. It was that conduct, separate from the

specific role Day Engineering was engaged to perform, which was the basis for reversing the dismissal of the action against it. *Henderson*, ¶17, 560 P.3d at 689. Nowhere does Community allege, argue or imply that the Haag Petitioners did anything other than investigate Community's Property and report their evaluation to Berkshire; Community complains about what, how and why the Haag Petitioners reported what they did, but that does not place their conduct outside the scope of their agreement with Berkshire.

Regarding plaintiff's claim, in *Henderson*, based upon Day Engineering's evaluation of the damage to the specific building the plaintiff's property insurer retained it to inspect, the Court of Civil Appeals discussed applicable Oklahoma case law and then held:

> We find the reasoning of these cases to be persuasive and hold that *third-party consultants hired to investigate, evaluate, or otherwise assess damage on behalf of an insurance company cannot be held liable by an insured for negligence for work performed on the claim.*

Henderson, ¶16, 560 P.3d at 689 (emphasis added). That is, the dismissal of the only claim in *Henderson* analogous to Community's claim against the Haag Petitioners in the instant case was affirmed. The holding in *Henderson* supports the Haag Petitioners' position that Community's allegation fail state a claim upon which relief may be granted against the Haag Petitioners.

Community's case, *Hooper v. American Strategic Insurance Corp.*, 2025 WL 1140228 (N.D. Okla., Apr. 17, 2025) is irrelevant; the Federal Magistrate Judge granted a Motion to Remand a removed action back to State Court. Such an order is not subject to appellate review. 28 U.S.C. §1447. Its holding does not warrant departure from the clear, precedential statements of Oklahoma law. *See*, Community's Answer Brief, pp. 9-10.

If controlling precedent for the specific set of relationships at issue holds, unequivocally, that no duty was owed by the Haag Petitioners to Community, then no duty is owed. If no duty is owed, no duty can be breached. Moreover, the only harm Community alleged is Berkshire's failure

to compensate it fully for its loss under the terms of its insurance policy. The Haag Petitioners did not owe a duty to Community to prevent damage of that sort.

The Haag Petitioners' reliance on *Christian, Timmons,* and *Trinity* is the application of controlling case law to Community's allegations; it is not a "Red Herring" and, Community's contention that it is, itself is without merit. Community's Response Brief pp. 6-11.

III. Community Failed to State a Claim for Tortious Interference With Contract

Community did not allege any act, omission, or role of the Haag Petitioners separate from their role as third-party investigators. Although the Haag Petitioners do not admit or concede Community's allegations of ulterior motives or collusive agreements with Berkshire, those allegations and arguments by Community do not suggest an act or omission separate from the Haag Petitioners' relationship with Berkshire with respect to Berkshire's evaluation of Community's claim under its property insurance policy. Community's arguments are without merit and do not support a claim against the Haag Petitioners. Community's Response Brief, pp. 11-15.

For example, Plaintiff cites *Cohlmia v. Ardent Health Services,* 448 F. Supp.2d 1253 (N.D. Okla., 2006) but in that case, the Court dismissed the claim for tortious interference with contract:

> Thus, to the extend Plaintiffs here complain that Defendant Elkins interfered with their contract with HMC, Defendant's objection that the claim will not lie is correct, because Elkins was allegedly acting on behalf of HMC, a party to the contract.

Cohlmia, 448 F. Supp.2d at 1268; *see*, Community's Response Brief, p. 11. Community asserts:

> In the Comments to Instruction No. 24.1, the Oklahoma Supreme Court noted "[t]he Restatement (Second) of Torts 2d recognizes two types of interference with contractual relations," including "interference with the performance of contract by causing a party to the contract other than Plaintiff not to perform," and "interference of a contract by preventing a Plaintiff's own performance of the contract or by making the Plaintiff's performance more expensive or burdensome."

Community's Response Brief, p. 11 (citations omitted). The Haag Petitioners did not cause Berkshire not to perform under its policy issued to Community; Berkshire remained in control of coverage determinations. Any attempt to apply that rationale to the Haag Petitioners would impermissibly attempt to shift to them, Berkshire's obligations of performance, which Oklahoma law will not permit. *Christian, supra; Timmons, supra; Trinity, supra.* Similarly, nothing the Haag Petitioners did or did not do, prevented Community from performing because Community did in fact submit a claim under its policy issued by Berkshire. ROA, Doc. 2, Amended Petition, ¶14, p. 3, record at 15.

Community also cites, *Wilspec Technologies v. DunAn Holdings Grp,* 2009 OK 12, 2004 P.3d 69, in which the Oklahoma Supreme Court, answering a certified question from a Federal District Court, adopted Rest. (2d) Torts, § 766A, but the Court did not apply it to the factual context, and certainly had nothing to say about how it would apply to the relations among Community, Berkshire, and the Haag Petitioners in the present action.

Community's efforts to distinguish *Voiles v. Santa Fe Minerals,* 1996 OK 13, 911 P.2d 1205, fail. Community's Response Brief, p. 13. As discussed by the Haag Petitioners in their Brief In Chief, in *Voiles,* the Defendants had leases with landowners to work oil and gas fields. A third-party ("Hugoton") obtained top leases from the owners which would become effective only if the underlying leases terminated. The third-party also obtained authority from the owners to pursue actions in their names to terminate the underlying oil and gas leases. The Defendants attempted to assert third-party claims against Hugoton, including claims for tortious interference with a contract. The Oklahoma Supreme Court reversed a District Court finding that Hugoton intentionally interfered with the leases, stating:

> If Hugoton was acting as agent for the mineral owners in the litigation with the base lessees the Defendants' claim for interference with contract is, as a matter of law, without foundation.

Voiles, ¶18, 911 P.2d at 1210. This holding by the Oklahoma Supreme Court did not depend upon whether Hugoton acted intentionally or not. Instead, the circumstances of the claim would support an inference that Hugoton had a scheme to try to obtain the leases for himself and pursued his contractual relations with the landowners to obtain that result. The Haag Petitioners Brief In Chief, pp. 21-22. Accordingly, Community is in error when it asserts that "an agent who acts with improper motive and for private financial gain beyond the scope of a legitimate agency relationship forfeits any protection under *Voiles*." Community's Response Brief, p. 13. Just as Hugoton's personal motives did not support a tortious interference with contract claim, so Community's allegations regarding personal interests on the part of the Haag Petitioners make no difference. The Haag Petitioners do not admit or concede the truth of those allegations, but it is clear that even if they were accurate, Community still could not pursue a claim for tortious interference with contract against the Haag Petitioners.

Community's reliance on *Hawk Enterprises v. Cash America Int'l*, 2012 OK CIV APP 66, 282 P.3d 786 is misplaced. *See*, Community's Response Brief, p. 14. First of all, as an opinion of the Oklahoma Court of Civil Appeals, *Hawk* is not precedential or controlling authority. *See*, Okla. Sup. Ct. R. 1.200(d)(2). More specifically, the Plaintiff "Hawk" had a franchise agreement with "Mr. Payroll" granting Hawk the exclusive right to operate check cashing facilities in Oklahoma City using the name "Mr. Payroll." Another entity "Cash America" signed the agreement as guarantor for Mr. Payroll. However, "Cash America had started operating check cashing facilities in Hawk's exclusive territory" as a result of which Hawk sued Cash America for interference with its contract with Hawk. *Hawk*, ¶2, 282 P.3d at 788. Additionally, the Court of Appeals also noted

that "it appears that Mr. Payroll was purchased by Cash America and that Cash America may be the parent corporation of Mr. Payroll, although the extent of Cash America's ownership and control of Mr. Payroll is not established in the record." *Hawk*, ¶9, 282 P.3d at 790. Thus, Cash America, possibly the parent of Mr. Payroll, was not acting on behalf of Mr. Payroll when it opened separate check cashing facility. The Court of Appeals identified the issues it was addressing:

> Oklahoma has not addressed the issue of whether a parent corporation may be liable for tortious interference with the contracts of a subsidiary. . . .
>
> . . . .
>
> We find that the determination of whether a parent corporation can be liable for tortious interference with the contracts of the subsidiary is a question that must be determined on a case-by-case basis, ...

Hawk, ¶15 & 19, 282 P.3d at 792, 794 (footnote omitted). Thus, the scenario addressed in *Hawk* has no relation to Community's claim against the Haag Petitioners. There is no suggestion that the Haag Petitioners were the "parent corporation" of Berkshire, nor is there any suggestion that the Haag Petitioners had any sort of "ownership and control" of Berkshire. Therefore, *Hawk*, has nothing to say which would render Community's tortious interference claim against the Haag Petitioners viable.

It is unclear why Community cites, *Loven v. Church Mutual Insurance*, 2019 OK 68, 452 P.3d 418. Discussing *Loven*, Community states: "the Court held that 'the element of intentional interference clearly requires a showing of bad faith,' . . ." Community's Response Brief, p. 14, quoting *Loven*, ¶21, 452 P.3d at 426 (footnote omitted). However, Community's primary argument is that it has not alleged a "bad faith" claim against the Haag Petitioners. Community's Response Brief, pp. 3, 6, 7. Fundamental Oklahoma law holds that an insured may not pursue a "bad faith" claim against a Third-Party investigator for its insurer. *Christian, supra; Timmons, supra; Trinity, supra. Loven*, therefore, supports the Haag Petitioners position that Community's claim against

them should have been dismissed for failure to state a claim upon which relief may be granted, pursuant to 12 O.S. 2021, § 2012(B)(6).

Likewise, Community's citation of *Tuffy's v. City of Oklahoma City*, 2009 OK 4, 212 P.3d 1158 supports the failure of its claim against the Haag Petitioners. Community argues that "*Tuffy*, . . . provides the foundation framework for the **bad faith requirement in tortious interference claims**." Community's Response Brief, p. 15 (emphasis added). The syllogism is simple, valid, cogent and compelling:

> Major premise: a claim for tortious interference with contract has a bad faith requirement.
>
> Minor premise: Community may not pursue a bad faith claim against the Haag Petitioners.
>
> ---
>
> Conclusion: Community may not pursue a claim for tortious interference with contract against the Haag Petitioners

This syllogism as a well-recognized, completely valid form:

> Major premise: All S is P
>
> Minor premise: *X* is not P
>
> ---
>
> Conclusion: *X* is not S

The logic is irrefutable: Because Community may not pursue a claim for "bad faith" against the Haag Petitioners, it may not pursue a claim for tortious interference with contract against them, either. *Christian, supra; Timmons, supra; Trinity, supra.* Therefore, the District Court of Payne County should have dismissed that claim for failure to state a claim upon which relief may be granted, pursuant to 12 O.S. 2021, § 2012(B)(6).

IV. Community Failed to State a Claim for Conspiracy

The Haag Petitioners did not owe, and did not breach, a duty to Community. *Christian, supra*, ¶25, 577 P.2d at 904; *Timmons, supra*, ¶16-17, 653 P.2d at 912-913; *Trinity, supra*, ¶¶18, 26, 28, 31 & 34, 341 P.3d at 82, 85-87. Therefore, as to Community, the Haag Petitioners neither did "an unlawful act" nor did they employ "unlawful means." *See*, Community's Response Brief, p. 15, *citing, Brock v. Thompson,* 1997 OK 127, ¶39, 948 P.2d 279, 294. Community's claim under a conspiracy theory of liability should have been dismissed pursuant to 12 O.S. 2021, § 2012(B)(6).

Community's own authorities demonstrate that its conspiracy claim against the Haag Petitioners must fail. In the very paragraph cited by Community, the Oklahoma Supreme Court also said: "there can be no civil conspiracy where the *act* complained of and the *means employed* are lawful." *Brock*, ¶39, 948 P.2d at 294 (italics original; footnote omitted). In *Brock*, the Oklahoma Supreme Court issued a Writ prohibiting the District Court from proceeding further with a conspiracy claim. *Brock*, ¶¶1, 7 & 49, 948, P.2d at 282, 284, 296.

Community also cites a Federal case which held that the Plaintiff would not be allowed to assert a claim for conspiracy against a particular Defendant because the Court already found that Plaintiff failed to state a claim for "the only underlying tort" alleged against that Defendant. *Transportation Alliance Bank v. Arrow Trucking Co.*, 2011 WL 221863, *6 (N.D. Okla, Jan. 21, 2011); *see*, Community's Response Brief, p. 15. Community argues that its conspiracy claim is supported by its tortious interference with contract claim. Community's Response Brief, p. 17. Because its tortious interference with contract claim necessarily fails as demonstrated in section III. above, its claim for conspiracy falls with it.

Community also *cites*, *Fulton v. People Lease Corp.* 2010 OK CIV APP 84, 241 P.3d 255 but Community's reliance upon it is misplaced for at least three reasons: first, *Fulton* did not

address a claim arising under an insurance policy and against third-party investigators for the insurer; second, the opinion did not address the viability of a conspiracy theory of liability (the word only appears in one paragraph); and third, the Court "f[ou]nd no fault with the dismissal below of the general tort of malicious wrong." *Fulton*, ¶¶36 & 50, 241 P.3d at 264-265, 267.

Similarly, Community misplaces reliance on *Tanique v. State of Oklahoma, ex rel. Oklahoma Bureau of Narcotics & Dangerous Drugs*, 2004 OK CIV APP 73, 99 P.3d 1209 which also did not address a claim against third-party investigators for an insurer in a claim based upon a coverage dispute; the Court of Civil Appeals also affirmed summary judgment against the plaintiff on a conspiracy theory of liability. *Tanique*, ¶39, 99 P.3d at 1219.

Community argues a distinction without a difference between its "conspiracy" allegations and alleged "collusion" which is insufficient to state a claim against an insurer's third-party investigators. *Trinity, supra*, ¶17, n. 5, 341 P.3d at 81. "Collusion" has been defined to include "[a]n agreement to defraud another or to do or obtain something forbidden by law." Black's Law Dictionary (11th Ed., 2019). So defined, "collusion" seems to be the gist of Community's "conspiracy" allegations (although not admitted by the Haag Petitioners).

Community relies on its contention that it is not asserting a claim for "bad faith" as another distinction without a difference. As the Bard said:

> What's in a name? That which we call a rose by any other name
> would smell as sweet; . . . .

Shakespeare, *Romeo & Juliet*, Act II, Scene II, ll. 43-44. Likewise, "that which we call [bad faith] by any other name" would still fail to state a claim upon which relief may be granted. Community cannot avoid the controlling effect of precedential case law addressing the specific circumstances of its claim against the Haag Petitioners, merely by invoking a different name for it.

As addressed in section II., above, Community may not pursue a claim alleging "bad faith" against the Haag Petitioners, which Community repeatedly acknowledges throughout its Response Brief. Additionally, as demonstrated in section III., above, Community cannot pursue a claim for tortious interference with contract against the Haag Petitioners, because they acted pursuant to an agreement with Berkshire, a party to Community's policy, by investigating Community's claim and reporting their findings to Berkshire; at no time did the Haag Petitioners depart from that role. From this it follows that Community may not pursue a claim for conspiracy against the Haag Petitioners, and such a claim should have been dismissed by the District Court pursuant to 12 O.S. 2021, § 2012(B)(6).

V. The Threat of Double-Recovery Warrants Rejecting Community's Claims

Contrary to Community's argument, the threat of a "double-recovery", should its claims against the Haag Petitioners be allowed, is neither premature nor overstated.

Community is responding to the following quotation by the Haag Petitioners:

> The existence of a separate legal duty on the part of the adjuster in these circumstances would allow for potential double recovery, permitting the insured to recover in tort both for breach of contract or breach of the duty of good faith and fair dealing by the insurer – caused by an adjuster's negligent conduct and from the adjuster for the **same conduct**.

Trinity, supra, ¶31, 341 P.3d at 86 (emphasis added; citations omitted). The Haag Petitioners' Brief In Chief, p. 18. The issue is the **conduct** of the Haag Petitioners, and the relation it bears to any claim Community has against its insurer, Berkshire. As has been reiterated numerous times, the Haag Petitioners investigated Community's claim for damages and reported their findings to Berkshire; the Haag Petitioners never stepped outside of their role as third-party investigators for Berkshire. Any harm, injury or damage to Community derived from Berkshire's coverage determination; the relation of that determination to the Haag Petitioners' **conduct** is necessarily

filtered through the extent to which Berkshire considered the results of their investigation in evaluating whether and to what extent it would accept coverage for Community's claim under the policy. To the extent the Haag Petitioners' conduct has any connection (however remote) to Community's alleged loss, it is the "same conduct" included in Berkshire's coverage determinations. The paragraph in *Trinity* quoted by the Haag Petitioners and addressed by Community, ended with a sentence stating:

> In the words of the Supreme Court of Vermont in *Hamill*: "in most cases, imposing tort liability on independent adjusters would create a redundancy unjustified by the inevitable costs that eventually would be passed on to insureds."

Trinity, ¶31, 341 P.3d at 86, quoting *Hamill v. Pawtucket Mut. Ins. Co.*, 2005 VT 133, ¶14, 892 A.2d 226 (other citation, omitted). Given these concerns, endorsed by the Oklahoma Supreme Court, it is neither premature nor overstated to consider the legal redundancy of Community's claims against Berkshire and the Haag Petitioners as well as the concomitant additional cost in determining whether a claim of that sort should be allowed against the Haag Petitioners.

Community concedes the nature of its claim against the Haag Petitioners and that it is inseparable from its claim against Berkshire:

> Community's claims against Berkshire – breach of contract, bad faith, and civil conspiracy – arise from Berkshire's failure to pay what the policy requires, its overall handling of the claim, and its participation in the scheme to minimize Community's losses. Community's claims against the Haag Petitioners stem from a **single wrong**: the deliberate production of a fraudulent engineering report for personal financial gain.

Community's Response Brief, p. 19 (emphasis added). The so called "fraudulent report" was prepared and submitted by the Haag Petitioners in their role as Third-Party investigators for Berkshire. Although the Haag Petitioners deny their report was "fraudulent", Community's allegations that it was nevertheless admits that it was a report to Berkshire by the Haag Petitioners

in their role as third-party investigators and that the Haag Petitioners owed no duty to Community based upon that relationship. *Trinity*, ¶¶1, 16-23, 31 & 34, 341 P.3d at 77, 81-83, 86, 87; *Timmons, supra*, ¶¶16-17, 653 P.2d at 912-913; *Christian, supra*, ¶25, 577 P.2d at 904-905.

VI. Conclusion

Wherefore, premises considered, the Petitioners and Defendants, Chris Hickman and Haag Engineering Co., pray the court to accept the arguments presented in their Brief In Chief and in this Reply, and further pray the court, after due consideration, to vacate and reverse the Order of the District Court of Payne County denying their Motion to Dismiss. ROA, Doc. 7, Journal Entry, filed September 29, 2025, Record at 88-90. The Petitioners and Defendants, Chris Hickman and Haag Engineering Co., pray the Court to Remand this matter to the District Court of Payne County with directions to dismiss the claims against them, with prejudice to the refiling thereof.

Respectfully submitted,

SECREST, HILL & SECREST

BY: Edward Main

JAMES K. SECREST, II, OBA #8049
EDWARD J. MAIN, OBA #11912
7134 S. Yale, Ste. 900
Tulsa, OK 74136
(918) 494-5905
(918) 494-2847 fax
jsecrest@secresthill.com
emain@secresthill.com
Attorney for Defendants/Petitioners,
Chris Hickman and Haag Engineering Company

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the above and foregoing instrument was mailed this 13th day of May, 2026, by depositing it in the U.S. Mail, postage prepaid or by electronic mail to:

J. Revell Parrish
GLASS & TABOR, LLP
1601 36th Ave. NW
Norman, OK 73072
revell@glasstaborlaw.com
barbara@glasstaborlaw.com
Attorney for Plaintiff, Community Resourcing, Inc.

Kenneth N. Jean
MARTIN JEAN & JACKSON
PO Box 1588
Ponca City, OK 74602
kjean@mjjlawfirm.com
Attorney for Plaintiff, Community Resourcing, Inc.

Robert A. Bragalone
Hunter S. Carlson
GORDON & REES
3030 NW Expressway, Ste. 300 #682
Oklahoma City, OK 73112
bbragalone@grsm.com
hcarlson@grsm.com
cdmitchell@grsm.com
Attorney for Defendant, Messer-Bowers Company

Shannon M. O'Malley
W. Scott Keffer, *pro hac vice*
ZELLE, LLP
901 Main Street, Ste. 4000
Dallas, TX 75202
somalley@zellelaw.com
skeffer@zellelaw.com
Attorneys for Defendant, Berkshire Hathaway Specialty Ins.

Kristen Evans
Hillary Hurst
521 E. 2nd Street, Ste. 1200
Tulsa, OK 74120
Attorney for Berkshire Hathaway Specialty Insurance Co.

Edward Main

001\25013