

IN THE COURT OF APPEALS OF OHIO

SEVENTH APPELLATE DISTRICT
MAHONING COUNTY

REVIVE NIGHTLIFE GROUP, LLC,

Plaintiff-Appellant,

v.

THE CITY OF YOUNGSTOWN, et al.,

Defendants-Appellee.

OPINION AND JUDGMENT ENTRY
Case No. 26 MA 0021

Civil Appeal from the
Common Pleas Court of Mahoning County, Ohio
Case No. 2023 CV 00575

BEFORE:

Carol Ann Robb, Cheryl L. Waite, Katelyn Dickey, Judges.

JUDGMENT:

Affirmed.

Atty. Rhys B. Cartwright-Jones, for Plaintiff-Appellant and

Atty. Richard C.O. Rezie, Atty. Gary L. Nicholson, Gallagher Sharp LLP, for Defendants-Appellee.

Dated: September 29, 2026

Robb, J.

{¶1} Plaintiff-Appellant Revive Nightlife Group, LLC (the insured) appeals the decision of the Mahoning County Common Pleas Court granting summary judgment for Defendant-Appellee United States Liability Insurance Company. Among other exclusions, the insurance policy excluded coverage for loss “caused directly or indirectly by . . . The enforcement of any ordinance or law . . . [r]equiring the tearing down of any property, including the cost of removing its debris . . . [or by] Governmental Action [through] Seizure or destruction of property by order of governmental authority.” The main issue is whether these policy exclusions depend on the propriety of the government order or enforcement of an ordinance. For the following reasons, the judgment is affirmed.

STATEMENT OF THE CASE

{¶2} On March 31, 2023, the insured filed a complaint against its insurance company and the City of Youngstown. According to the complaint, the insured owned a building at 3305-3309 South Avenue that was insured by the insurance company (beginning at an unspecified date when the building was known to be vacant). On April 12, 2022, the fire chief found the building structurally unsound and issued an order under city ordinances authorizing emergency demolitions. The city demolished the building on April 18, 2022. The insured submitted a claim with the insurance company. In a July 27, 2022 letter, the insurance company denied the coverage, explaining the policy excluded loss from a government-ordered demolition.

{¶3} The first count in the complaint was entitled “Breach of Due Process and Unlawful Taking” and set forth a claim against the city under 42 U.S.C. 1983 (deprivation of constitutional rights under color of state or local law), citing the Fifth and Fourteenth Amendments to the United States Constitution. The complaint alleged, “there was nothing structurally unsound about the building that could not be remedied promptly.” The complaint then claimed the city’s posting of notice at the property constituted insufficient process, challenging the constitutionality of the city’s emergency demolition ordinances

and an Ohio statute.¹ Yo.Cod.Ord. 1309.04 (stating the fire chief has authority to order emergency demolitions, which require no prior notice to the property owner), citing Yo.Cod.Ord. 1525.01 (posting of notice of unsafe structure and demolition in emergency); R.C. 715.26(A) (“If an emergency exists, as determined by the municipal corporation, notice may be given other than by certified mail and less than thirty days prior to such removal or repair.”). Alleging the existence of an official policy or position, other examples of the city’s use of no-notice emergency demolitions were cited in the complaint.

{¶4} The second count was entitled “Breach of Contract and Bad Faith” based on the insurance company denying the insured’s claim. It was alleged the denial of coverage breached the policy and was not in good faith because it was based on circumstances that did not furnish reasonable justification for denial. The complaint posited the exclusions are inapplicable to “an unlawful demolition and destruction and an act of vandalism.”

{¶5} The city filed an answer with a counterclaim for the demolition expenses, attaching the fire chief’s order. The insurance company filed an answer with various defenses and included quotes from the exclusions clause of the policy.

{¶6} On February 28, 2024, the insurance company filed a motion for summary judgment asking the court to apply the plain language of various provisions in the policy including the exclusions clause; it was alleged the loss was not caused by and did not result from a covered cause of loss. For instance, the motion argued the policy clearly did not cover a loss caused by government demolition upon enforcement of an ordinance. It was urged there was no genuine issue of material fact because the insurance claim was based on the insured’s complaint against the city but the *validity* of the city’s enforcement or demolition was not relevant to the exclusions clause of the policy. It was accordingly, also concluded the refusal to pay on this basis was justified after the investigation showed the loss was caused by a government demolition. In support, the summary judgment motion cited cases from various jurisdictions applying similar exclusions to government demolitions.

¹ An emergency can constitute an exception to pre-deprivation due process. *See, e.g., Parratt v. Taylor*, 451 U.S. 527, 538-39 (1981) (“The possibility of erroneous destruction of property was outweighed by the fact that the public health emergency justified immediate action and the owner of the property could recover his damages in an action at law after the incident.”), *overruled on other grounds by Daniels v. Williams*, 474 U.S. 327, 330-333 (1986) (contrary to *Parratt*, negligent conduct by a state official is not a deprivation under the due process clause, which provides security against an “arbitrary” exercise of government power).

{¶17} An affidavit was submitted to authenticate the insurance policy, pinpoint the relevant clauses, and incorporate the letter denying coverage. This denial letter explained the insurance company hired a named independent adjustment firm to investigate the claim on the insurance company's behalf and retained a special investigator to assist with the investigation. The investigation concluded the building was demolished by order of the fire chief who deemed it an unsafe vacant nuisance building that was about to collapse.

{¶18} Quoting the policy, the denial letter determined the loss from a government-ordered demolition was excluded, citing an exclusion for enforcement of an ordinance or law and an exclusion for government action. (The letter also reserved rights such that these citations did not preclude the applicability of additional exclusions). Noting the position may be subject to change upon the development of additional facts or legal theories, the letter also advised: "This determination is based upon all information available to me at this time. If you have additional information or legal authority that you believe may affect the Company's position regarding coverage for this claim, or you obtain such information or authority in the future, I would be happy to review the same at any time." No further information was provided by the insured, such as to show some covered loss occurred.

{¶19} On May 8, 2024, the insured filed a response in opposition to summary judgment with a request for leave to file it *instanter* (as it was eight weeks late). See Mah.C.P. Civ.Loc.R. 6(A)(2) (14 days to respond). The insured argued the exclusions barred coverage only if the fire chief's demolition order was valid, but if his order was invalid, then the demolition was an act of vandalism. According to the insured, "commonsense dictates that governmental action must be a valid government action" and thus issues of fact remained on the validity of the order, as the litigation against the city was pending.²

² Although the city did not file a motion (on immunity or the evidence), the insured's opposition also said summary judgment for the city was inappropriate due to his allegations, citing a case that merely ruled on whether the complaint pled a claim that would avoid government immunity. See *Two Bridges, LLC v. City of Youngstown, Ohio*, 2023 WL 4030071, *3-4 (6th Cir. June 15, 2023) (where a post-demolition suit was filed against the city and moved to federal court, the circuit court decided an interlocutory immunity appeal by holding the complaint pled a federal due process claim falling under the exception to immunity for a civil claim based on federal constitution or statute; finding essential nature was a 1983 color of law action rather than tort action for wrongful demolition).

{¶10} The insurance company opposed the request for leave to file the untimely response. Alternatively, the insurance company filed a reply in support of summary judgment. It was urged the validity or invalidity of the government’s action was not a material fact relevant to the policy language, pointing out the company was not the city’s insurer.

{¶11} The trial court granted summary judgment for the insurance company. (8/13/25 J.E.). In doing so, the court observed numerous courts analyzed similar policy exclusions under the rules of contract construction and concluded the policy did not cover demolitions by a government order, regardless of whether the building was rightfully destroyed or whether there was “some gaffe by a local government official.” *Id.*, quoting *Reichert v. State Farm Gen. Ins. Co.*, 212 Cal.App.4th 1543, 1549 (2012).

{¶12} Pointing out the interpretation of the policy was a question of law, the court concluded the coverage excludes the “tearing down” of property pursuant to enforcement of an ordinance or to the destruction of property by order of governmental authority, among other exclusions. *Id.*, citing USLIC Policy, Causes of Loss -- Special Form. The court concluded the insurance company demonstrated as a matter of law the insured was not entitled to payment under the policy, the refusal to pay the alleged loss was justified, there is no genuine issue of material fact, and the insurance company was entitled to dismissal of count two captioned “Breach of Contract and Bad Faith.”

{¶13} The insured appealed the August 13, 2025 decision, resulting in 25 MA 0086. On September 16, 2025, this court dismissed the appeal as the trial court’s decision did not resolve all claims against all parties or contain Civ.R. 54(B) language.

{¶14} On October 30, 2025, the insured filed a motion for certification under Civ.R. 54(B), describing the motion as unopposed. The insurance company pointed out this was misleading, as the insurance company was no longer a party and thus did not attend the recent pretrial hearing where the matter was discussed. The trial court set the matter for a conference, which was continued on the insured’s motion. Eventually, the insured withdrew its claims against unnamed John Doe defendants, leaving only the city as a party.

{¶15} Thereafter, the trial court added a Civ.R. 54(B) certification to the August 13, 2025 judgment, stating there was no just reason for delay. (2/26/26 J.E.). The insured

filed a timely notice of appeal from the August 13, 2025 summary judgment, made final by the February 26, 2026 judgment, resulting in the present case.

POLICY LANGUAGE & LAW GOVERNING THE REVIEW

{¶16} The policy’s coverage form begins by stating the insurance company “will pay for direct physical loss of or damage to Covered Property caused by or resulting from any Covered Cause of Loss.” (S.J. Aff.) (Ex.A). A covered cause of loss is defined by citing to the “applicable Causes of Loss Form as shown in the Declarations.”

{¶17} In pertinent part, the declarations cite to “Causes of Loss - Special Form.” This incorporated form begins by stating the term “Covered Causes of Loss” means “Risks of Direct Physical Loss” *unless* excluded by the exclusions in Section B (or limited by the limitations). The special form then immediately sets forth multiple exclusions.

{¶18} In denying the insured’s claim, the insurance company’s denial letter explained the investigation learned the loss was due to a city demolition ordered by the fire chief after he deemed the structure unsafe. Explaining additional reasons for coverage were not waived by explanation, the denial letter quoted the following:

B. Exclusions

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

a. Ordinance Or Law

The enforcement of any ordinance or law . . . (2) Requiring the tearing down of any property, including the cost of removing its debris . . .

c. Governmental Action

Seizure or destruction of property by order of governmental authority.

USLIC Policy, Causes of Loss - Special Form, Exclusions Clause B.1.a³ and B.1.c.⁴

³ Clause B.1.a further provides: “This exclusion, Ordinance Or Law, applies whether the loss results from: (a) An ordinance or law that is enforced even if the property has not been damaged; or (b) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property, or removal of its debris, following a physical loss to that property.”

⁴ Clause B.1.c further provides: “But we will pay for loss or damage caused by or resulting from acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread, if the fire would be covered under this Coverage Part.”

{¶19} The insurance company’s summary judgment motion quoted these exclusions plus those in the next two divisions of the exclusions clause. The insured sets forth arguments against the application of all four quoted exclusions, while the insurance company focuses on the first two exclusions in defending the appeal, which were the ones in the denial letter. Briefly, we review the third and fourth exclusions addressed by the insured.

{¶20} The collapse exclusion states, “We will not pay for loss or damage caused by or resulting from . . . Collapse, including any of the following conditions of property or any part of the property: (1) An abrupt falling down or caving in; (2) Loss of structural integrity, including separation of parts of the property. . . .” *Id.* at B.2.k (or cracking, bulging, sagging, bending, leaning, settling, shrinkage, or expansion as such condition relates to 1 or 2). There are exceptions, such as when additional coverage for certain causes of collapse applies but not for danger of collapse. *Id.* at B.2.k, D.1-.3 (exceptions including collapse from the weight of people, property, or rain).

{¶21} On this exclusion, the insured argues a demolition would not fall under the policy’s definition of collapse. In the reply brief, the insured adds to this by commenting a city’s belief the building might collapse is not the same as a collapse. The reply points out a case cited by the insurance company supports both statements. *Sharritt v. Celina Mut. Ins. Co.*, 1984 WL 3828, (2d Dist. Aug. 17, 1984) (where the distinct homeowner’s policy covered collapse as a peril, but the appellate court affirmed where the trial court concluded neither settling *nor a subsequent demolition* fell under the collapse coverage). This case was reviewed in the insurance company’s summary judgment motion, and thus should have been addressed in the insured’s initial brief on appeal.

{¶22} In *Sharritt*, the county razed a house built on a landfill in anticipation of a collapse. The insured attempted to rely on a clause specifically providing coverage for collapse, but the insurance company argued no actual collapse occurred. *Id.* at * 1. The courts applied the ordinary definition of collapse as falling down, falling together, or caving into an unorganized mass. *Id.* at *1-2, citing *Olmstead v. Lumberman Mutual Ins. Co.*, 22 Ohio St. 2d 212, 216 (1970). In addition to finding collapse did not include the sinking and settling, the trial court ruled the “subsequent demolition of appellant’s house did not constitute ‘collapse’ for purposes of insurance coverage.” *Id.* at *2-3 (where the clause covering collapse expressly did not include settling, cracking, or expansion). The

homeowner’s appeal argued her loss was covered under the collapse provision. *Id.* at * 1. In main part, the appellate court rejected the insured’s “constructive collapse” theory, agreeing an imminent or eventual collapse plainly did not qualify as collapse and thus was not covered by the policy. *Id.* at * 2-3 (requiring “collapse in fact” and implicitly agreeing the subsequent demolition was not a collapse).

{¶23} Here, the policy excluded both collapse and settling-like issues (with exceptions), and the insured is not arguing a pre-demolition cause of collapse (precipitating the ordinance enforcement) was a covered loss. The collapse exclusion along with cases on collapse may have been cited below by the insurance company as a preemptive argument, in case the insured believed some (unknown) pre-demolition event was covered or raised some causation argument under a constructive collapse theory. Thereafter, the insured’s opposition to summary judgment did not allege some prior cause of collapse should have been covered (all of the insured’s filings focus on the propriety of the government enforcement and demolition).

{¶24} The insurance company also used quotes from *Sharritt* to reinforce how plain language is applied as written rather than as the court would prefer and to point out the appellate court’s observation “in passing” that the policy contained an ordinance enforcement exclusion. *Id.* at *3. As the insured points out on the latter point, there was no indication the *Sharritt* homeowner alleged unlawful demolition, and this comment was dicta; the court not only remarked the exclusionary clauses need not be reached as there was no coverage, but the court also provided no opinion on the effect of the ordinance enforcement exclusion and thus did not effectively reach it. *Id.* Although still quoting this portion of the case, the insurance company’s response to the assignments of error does not rely on the collapse exclusion.

{¶25} The final exclusion cited in the insurance company’s summary judgment motion but not utilized in the argument section of the insurance company’s response on appeal is the acts or decisions exclusion. This exclusion states, “We will not pay for loss or damage caused by or resulting from . . . Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.” Exclusions Clause at B.3.b (unless this excluded cause of loss results in a covered cause of loss in which case the loss from the covered cause is payable).

{¶26} The insured utilizes the same argument set forth on the first two exclusions on the importance of the lawfulness of the government conduct, arguing the government act, decision, failure to act, or failure to decide must be lawful to be excluded from the policy’s coverage. Although acting as a catch-all exclusion, the insured complains this general exclusion should not “swallow” the covered losses or the more specific exclusions on enforcement of an ordinance or law and demolition order by governmental authority, which the insured reads as implicitly meaning “lawful” enforcement or order.

{¶27} In the reply brief, the insured raises a new thought by pointing out the fourth exclusion includes acts, decisions, or failures “by a person, organization, or government body” (not merely by a government body), arguing the insurance company’s interpretation of this exclusion would unreasonably swallow covered acts (such as fire or vandalism caused by *a person*). We note a reply is not the place for a new argument. The insured’s own brief deleted “person, organization” when quoting this exclusion, and although the exclusion is recited in the facts of the insurance company’s response brief, the argument section does not rely on the exclusion separately. As the insured’s reply recognizes, the last sentence of the acts or decisions exclusion adds: “But if an excluded cause of loss that is listed in 3.a. through 3.c. results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.” *Id.* at B.3.b

{¶28} Again, in defending against the appeal, the insurance company’s brief focuses the argument on the exclusions cited in the denial letter. That is, the entry of summary judgment is defended by relying on the ordinance enforcement exclusion (enforcement of any ordinance or law requiring the tearing down of any property) and the government action exclusion (destruction of property by order of governmental authority). See Appellee’s Brief at 12, 27 (setting forth statements in response to the assignments of error). We proceed to set forth the introductory law and then address Appellant’s arguments on those exclusions.

{¶29} Summary judgment is granted when there are no genuine issues of material fact and, when construing the evidence most strongly in favor of the non-moving party, reasonable minds can only conclude that the moving party is entitled to judgment as a matter of law. Civ.R. 56(C). We consider the propriety of granting summary judgment under a de novo standard of review. *Comer v. Risko*, 106 Ohio St.3d 185, ¶ 8. We also review de novo the question of whether an insurance policy has plain language or whether

the language is ambiguous. *Nationwide Mut. Fire Ins. Co. v. Guman Bros. Farm*, 73 Ohio St.3d 107, 108 (1995).

{¶30} An insurance policy is a contract subject to contract interpretation principles. *Lager v. Miller-Gonzalez*, 2008-Ohio-4838, ¶ 5. “When the terms in a contract are unambiguous, courts will not in effect create a new contract by finding an intent not expressed in the clear language employed by the parties.” *Shifrin v. Forest City Ents., Inc.*, 64 Ohio St.3d 635, 638 (1992). “If we are able to determine the intent of the parties from the plain language of the agreement, then there is no need to interpret the contract.” *Saunders v. Mortensen*, 2004-Ohio-24, ¶ 9. The intent is ascertained from the writing as a whole rather than from isolated pieces of it. *Gomolka v. State Auto. Mut. Ins. Co.*, 70 Ohio St.2d 166, 172 (1982).

{¶31} Common words are given their ordinary meaning unless a manifest absurdity would result or the instrument clearly evidences some other meaning. *Shifrin* at 638. A writing is not ambiguous unless its terms are “susceptible to more than one reasonable interpretation.” *Corder v. Ohio Edison Co.*, 2024-Ohio-5432, ¶ 14. “The mere fact that a contract's text might be subject to competing interpretations does not mean that the text is ambiguous” because if one of the competing interpretations of a conflict with the purpose or structure or if it strains ordinary usage, then it cannot be considered reasonable. *Id.*

{¶32} “An insurer who claims that a policy exclusion prohibits insurance coverage must show that the exclusion specifically applies.” *Neal-Pettit v. Lahman*, 2010-Ohio-1829, ¶ 19, citing *Continental Ins. Co. v. Louis Marx Co.*, 64 Ohio St.2d 399, 401 (1980) (burden on insurer to establish an exception or exclusion). “Exclusions of coverage must be clear and unambiguous to be enforceable.” *Id.*, citing *Moorman v. Prudential Ins. Co. of America*, 4 Ohio St.3d 20, 22 (1983).

{¶33} Nevertheless, in the cited case, the Supreme Court noted the rule of construing the insurance contract strictly against the insurer applies *only if the meaning of the language is ambiguous*. *Moorman* at 22-23 (where policy had an exclusion for mouth conditions that include treatment of the teeth but where the teeth had to be crowned not for a mouth condition but for a jaw condition, which was covered), citing, e.g., *Home Indemnity Co. v. Plymouth*, 146 Ohio St. 96 (1945), paragraph two of the syllabus (“Where exceptions, qualifications or exemptions are introduced into an

insurance contract, a general presumption arises to the effect that that which is not clearly excluded from the operation of such contract is included in the operation thereof.”). The Ohio Supreme Court continues to explain:

The rule that a contract provision should be strictly construed against one party and liberally construed in favor of the other—either due to the type of contract or contract provision at issue, inequality in bargaining power, or the fact that one party is the drafter and the other is not—is a secondary rule . . . Accordingly, it does not come into play unless the intent of the parties cannot be deciphered because the contract language is reasonably susceptible of two different interpretations.

Sutton Bank v. Progressive Polymers, L.L.C., 2020-Ohio-5101, ¶ 15 (distinguished from a primary rule, such as to give ordinary meaning to common words unless manifest absurdity or other meaning is clearly evidenced).

ASSIGNMENTS OF ERROR ONE & TWO

{¶34} The insured sets forth three assignments of error. The first two assignments allege:

“The trial court erred by granting summary judgment to USLI because USLI did not prove that the Ordinance or Law, Governmental Action, Collapse, and Acts or Decisions exclusions clearly and unambiguously bar coverage for a demolition challenged as unlawful, unconstitutional, ultra vires, procedurally defective, or void.”

“The trial court erred by treating the validity and lawfulness of Youngstown’s demolition order as immaterial and by resolving disputed causation and policy-construction issues against Revive on summary judgment.”

{¶35} The insured notes that some of the cases cited by the insurance company did not evaluate whether the exclusion at issue applied regardless of the propriety of the government enforcement, order, or action (as unlawfulness did not appear to be raised). For instance, in a case analyzing Ohio contract law cited by the insurance company, the court applied the plain language of the policy’s code enforcement exclusion to grant summary judgment for the insurance company after an insured complained the demolished garage was untouched by the fire that damaged the residence prior to demolition. *Miller v. Allstate Ins. Co.*, 2009 WL 10689362, *2 (N.D. Ohio July 20, 2009),

aff'd, 399 Fed.Appx. 96, 97 (6th Cir. 2010) (while essentially adopting the entire content of the district court's judgment).

{¶36} In *Miller*, the insured bought property and insurance less than a month before the home was damaged by an arson fire, and a few weeks after the fire, the City of Cleveland razed the house plus a garage that was not damaged in the fire. After finding a vandalism/vacancy exclusion applied to the fire at the dwelling, the federal district court rejected the insured's contention that the garage was covered despite the fact that the city "marked the garage for possible condemnation" a year prior to the demolition. *Id.* at *4. The *Miller* court concluded the insurance company did not breach the policy when it denied coverage because demolition of the garage by the city fell under the insurance policy's code enforcement exclusion. *Id.* Although the insured did not believe the city should have demolished the garage untouched by fire, the court generally relied on the year-old condemnation order and did not analyze whether the demolition of the garage would be excluded whether rightly or wrongly. *See id.* (pertinent to the next assignment, the court held a bad faith claim failed as a matter of law due to the failure of the breach of contract claim).

{¶37} In the Ohio case cited in the trial court's summary judgment entry, the insurance policy contained an exclusion nearly identical to the first exclusion in this case. *Popa v. Wayne Mut. Ins. Co.*, 88 Ohio App.3d 405, 408 (5th Dist. 1993) ("We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss . . . enforcement of any ordinance or law . . . requiring the tearing down of any property"). The Fifth District held, "It is clear that under the policy . . . the insurance company has specifically exempted loss or damage caused by the tear-down order." *Id.* The court thus sustained the insurance company's assignment of error regarding the plain and unambiguous language of the policy exclusion. *Id.* at 407-408 (where the trial court ruled for the insured on breach but for the insurance company on bad faith). On the same basis, the appellate court rejected the insured's cross-assignment on bad faith, wherein he argued he proved his bad faith claim because the insurance company lacked reasonable justification for denying his claim. *Id.*

{¶38} As the insured points out on the coverage issue, the propriety of the demolition order was seemingly not at issue in *Popa*. Still, in response to his suggestion

the demolition constituted vandalism, the insurance company cited *Popa's* ruling, “the loss to [the insured] occurred at the point when the city entered the demolition order.” *Id.* at 408 (rather than when vandalism by others thereafter occurred). Additionally, the holding assists in disposing of a bad faith claim where an insured relies on his breach of contract argument in support of the bad faith claim.

{¶39} The trial court’s judgment also cited a case where the insured hired a firm that conducted remodeling beyond a permit in violation of floodplain regulations and the city ordered the structure demolished to ensure it did not jeopardize its FEMA rating. *Reichert v. State Farm Gen. Ins. Co.*, 212 Cal.App.4th 1543, 1546 (2012). On the insured’s claim for coverage, the cited appellate court reviewed the policy and concluded the “law or ordinance exclusion thus plainly applies here.” *Id.* at 1550. The appellate court also observed, “the exclusion has been applied even where the loss has arisen out of some gaffe by a local government official, such as . . . not giving proper notice of a code violation . . .” *Id.* at 1549. The trial court here cited and adopted this observation in concluding the exclusion precluded coverage whether or not the building was rightly or wrongly destroyed via the demolition order. The insured points out the *Reichert* court then noted the case did not involve an insured’s allegation of unlawful ordinance enforcement. *Id.* at 1550.

{¶40} As the insured here explains, it was undisputed the policy excludes loss caused by a *lawful* enforcement of an ordinance or law requiring the tearing down of property and excludes loss caused by a *lawful* government action involving the destruction of property by order of the governmental authority. Rather, the argument is whether the exclusions would apply if the government enforcement or order failed to involve an actual emergency and failed to comply with federal constitutional notice requirements.

{¶41} Framed differently, the insured argues the existence of the demolition order is not necessarily the cause of the loss. It is claimed the actual cause in this case may be the lack of due process or an improper emergency finding through recklessness resulting in trespass and vandalism by the city (noting the policy covers vandalism). Yet, the exclusion applies to loss or damage “caused directly or indirectly” by ordinance enforcement and government order, and these exclusions are also both preceded by the warning, “Such loss or damage is excluded regardless of any other cause or event that

contributes concurrently or in any sequence to the loss.” The insurance company also points to cases indicating the cause is not eliminated by a government actor’s negligence initiating code enforcement event. See, e.g., *Hocking v. British Am. Assurance Co.*, 62 Wash. 73, 75-76 (1911).

{¶42} The insured concludes the trial court erred in finding the exclusions applied whether or not the building was rightly or wrongly destroyed, alleging this remained a question of fact (due to the pending allegations against the city). It is proposed the insurance company was not entitled to summary judgment because the insured’s complaint included a claim against the city alleging the demolition enforcement or order was flawed (for lack of emergency and constitutionally-required personal notice with an opportunity to respond) and the litigation against the city was still pending.⁵

{¶43} The insured declares the enforcement (of an ordinance or law) or the order of governmental authority (for demolition) necessarily carries the modifier of lawful and thereby necessarily does not exclude any enforcement or order that lacked due process and was not an emergency or is ambiguous as to whether they exclude such enforcements or orders by the government. To make these arguments, the insured complains the exclusions do not say they apply to unconstitutional or unlawful enforcements or demolitions, claiming the trial court essentially added the language “even if unlawful” to the exclusions.

{¶44} However, the exclusions do not specify the enforcement or order must be lawful either, and we conclude they cover all enforcements of ordinances or laws and all orders of governmental authority, both those performed perfectly proper and those alleged by the insured to be improper for some reason (and, eventually, established to be improper as well). Clearly, the word enforcement (before ordinance or law) does not naturally generate an implied modifier of “supported by the weight of the evidence” or

⁵ The insurance company’s motion solely alleged the propriety of the order was immaterial as a matter of law under the plain language of the policy without alternatively alleging the insured lacked evidence of an unlawful enforcement or order. Hence, the insurance company does not claim the insured failed to present summary judgment evidence on facts such as the alleged lack of notice (before and after the fire chief’s order), the effect of any lack of notice under the circumstances of this case, the facts surrounding the building, or the alleged lack of an emergency justifying lesser notice. See, e.g., *Vahila v. Hall*, 77 Ohio St.3d 421, 429-430 (1997) (movant’s initial burden before any reciprocal burden); *Mitseff v. Wheeler*, 38 Ohio St.3d 112 (1988), syllabus (“A party seeking summary judgment must specifically delineate the basis upon which summary judgment is sought in order to allow the opposing party a meaningful opportunity to respond.”); *Wilson v. Smith*, 2005-Ohio-337, ¶ 14-15 (9th Dist.) (insurance company’s motion on legal issue did not shift burden to insured on a factual issue).

“after procedurally constitutional notice.” Nor does a policy exclusion’s subheading “Government Action” or the phrase “order of governmental authority” give rise to an implicit limitation that the order must be procedurally constitutional and factually based on evidence indicating a credible and true emergency. This is the only reasonable construction; the insured’s construction conflicts with ordinary usage. This conclusion is supported by some cases cited by the insurance company.

{¶45} Consistent with the trial court’s adoption of the position noted in the *Reichert* case cited in the judgment on appeal, a government-ordered demolition exclusion “has been applied even where the loss has arisen out of some gaffe by a local government official, such as, in *Sweeney*, not giving proper notice of a code violation, or, as in *Hocking*, fumigating in such a way as to start a fire.” *Reichert*, 212 Cal.App.4th at 1549-1550 (2012) (pointing to a “consistent body of cases that have routinely applied the law or ordinance exclusion (or its predecessor, the civil authority exclusion)”), citing *Sweeney v. City of Shreveport*, 584 So.2d 1248, 1251 (La.App. 1991) (policy exclusion applied even though the code enforcement officer sent notice to the wrong address before demolition of vacant house); *Dlugokenski v. Hartford Ins.*, 2010 WL 5644849 (Conn.Super. 2010) (the exclusion applied where the city ordered an unsafe house demolished by an emergency demolition order, whether “rightly or wrongly” issued, including if the city did not follow all due process procedures); *California Cafe Restaurant v. Nationwide Mut. Ins. Co.*, 1994 WL 519449, (N.D.Cal. Sept. 14, 1994) (where the federal district court applied the governmental acts exclusion to deny coverage to insured’s business demolished by state order along with a freeway deemed unsafe after an earthquake, regardless of whether the order was “lawful” or whether government authority abused its discretion); *Hocking*, 62 Wash. 73 (1911) (where an insured’s death inside the house prompted the board of health to order fumigation which resulted in fire damage to the house, the state supreme court ruled the insurance policy’s civil authority exclusion barred coverage even if the officer was negligent); *Hawaii Land Co. v. Lion Fire Ins. Co.*, 13 Haw. 164 (1900) (where the board of health ordered certain buildings burned to prevent spread of bubonic plague and the fire accidentally spread to insured property, the loss fell under the policy’s exclusion for loss “caused directly or indirectly by order of any civil authority”).

{¶46} Rather than citing any cases holding the city order must be constitutionally valid and/or based on a factually sufficient emergency, the insured argues the cases indicating the exclusions apply to improperly ordered demolitions are not persuasive. The insured says the cited cases (describing the propriety of the government order or enforcement as irrelevant) do not employ Ohio legal principles requiring clear language for the exclusion or strict construction against the insurer. However, as the insurance company points out, the cases applied standard contract construction principles when finding plain and unambiguous language in the exclusion regardless of what state was involved. For instance, the *Sweeney* case (cited in the *Reichert* case cited by the trial court) reasoned:

While it is true that ambiguity in a policy is to be construed against the insurer, it is also true that an insurance policy is a contract which constitutes the law between the parties. Courts have no authority to alter terms of policies under the guise of contractual interpretation when the policy provisions are couched in unambiguous language . . .

A plain reading of the exclusion gives no indication that the procedure used to enforce the ordinance must be flawless in every respect. It simply states that the policy does not cover loss caused directly or indirectly by enforcement of any ordinance regulating the demolition of property. The record is completely clear that [the plaintiff's] house was condemned and demolished pursuant to the enforcement of an ordinance. By its plain terms, the exclusion applies . . .

Admittedly, [the plaintiff] did not receive notice that her property was to be demolished; thus her claim against the city may have merit. However, the exclusion provides that any loss directly or indirectly resulting from enforcement of an ordinance is excluded regardless of any contributing causes. It may be true that the negligence of city employees resulted in [the plaintiff] not getting notice and that this negligence contributed to the demolition of the house; however, the exclusion by its own terms still applies.

Sweeney at 1251, citing *Hawaii Land Co.* at 168 (where the Supreme Court of Hawaii pointed out the exclusion applies where the official purported to act in his power under a

law providing apparent authority because in the exclusion, “Nothing is said about the order being lawful, and it could not have been the intention of the insurer in inserting this clause in the policy to make its exemption from liability depend on the solution of nice questions as to the lawfulness of the orders of the civil authorities”).

{¶47} In a recent case cited by the insurance company, property of the insured’s neighbor was ordered to be demolished after the village deemed it unsafe but the insured’s property was damaged during the demolition. *McCann Plumbing, Heating & Cooling, Inc. v. Pekin Ins. Co.*, 228 N.E.3d 372, ¶ 5-6 (Ill.App. 2023). The trial court dismissed the insured’s case (including claims for breach and improper claims practice) based on the same government action exclusion existing here. *Id.* at ¶ 7-11. On appeal, the insured argued the government action exclusion was inapplicable because there was no order for the demolition of its property and the village lacked authority to demolish its property as various statutory measures must be taken prior to issuing a lawful destruction of a building. *Id.* at ¶ 14 (although, the order for the intended target was not alleged to be invalid). The Third Appellate District in Illinois affirmed the plain language application of the governmental action exclusion, concluding the damage was caused “directly or indirectly” from the destruction and stemmed from a government order. *Id.* at ¶ 16, 24.

{¶48} The discussion of black letter contract law principles was consistent with Ohio law. See, e.g., *id.* at ¶ 18-20 (exclusion of coverage must be clear, definite, and specific while language subject to more than one reasonable interpretation is ambiguous and strictly construed against the insurer; yet, the rule of liberal construction in favor of coverage only applies when the policy is ambiguous); *Sweeney* at 1251; *Hawaii Land Co.* at 171-172 (after recognizing ambiguities are construed against the insurer but plain language is applied, the Court held the question was not whether the government’s issuance of the order was justified). Contrary to other implications in Appellant’s argument and as set forth in the prior section, Ohio law is clear that the secondary rule of construction on construing the language against the insurance company does not apply until the language is found to be ambiguous. *Sutton Bank*, 2020-Ohio-5101, at ¶ 15; see also *Lager*, 2008-Ohio-4838, at ¶ 15 (if provisions are susceptible of more than one interpretation, they are construed strictly against the insurer, and an exclusion will be interpreted as applying only to that which is clearly intended to be excluded).

{¶49} Again, the policy excludes coverage for “loss or damage caused directly or indirectly by any of the following . . . **a. Ordinance Or Law** The enforcement of any ordinance or law . . . (2) Requiring the tearing down of any property, including the cost of removing its debris . . . **c. Governmental Action** Seizure or destruction of property by order of governmental authority.” (Within the first ellipsis is the warning, “Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.”)

{¶50} As acknowledged by the insured, state law and city ordinances provide authority for emergency demolition orders without the standard notice and the property was destroyed by the city official’s order while enforcing an ordinance or law. The loss of the structure was directly or indirectly caused by the enforcement of an ordinance of law requiring the tearing down of any property. Alternatively, the loss of the structure was directly or indirectly caused by destruction of property by order of governmental authority. Whether the notice was constitutionally sufficient and whether an emergency situation actually existed does not change the clear language of the policy exclusion. The insured’s insurance company was not the insurer of the city’s procedures and discretion. The insured’s complaint acknowledges the demolition order was enforcement of an ordinance or law under the color of authority.

{¶51} Because we conclude the insurance policy contains plain language excluding a loss directly or indirectly caused by the enforcement of an ordinance or law requiring the tearing down of property or a loss directly or indirectly caused by the destruction of property by order of governmental authority, there is no need to employ secondary rules of construction or to determine non-material facts involving litigation between the insured and the governmental authority causing the demolition. On such basis, these assignments of error are overruled.

ASSIGNMENT OF ERROR THREE

{¶52} Appellant’s final assignment of error contends:

“The trial court erred by dismissing bad faith because reasonable minds could find that USLI denied the claim categorically, without reasonable investigation into whether the demolition constituted lawful enforcement activity.”

{¶53} A bad faith claim is a tort claim. *Hoskins v. Aetna Life Ins. Co.*, 6 Ohio St.3d 272, 276 (1983) (there is no tort for breaching a contract, regardless of motive, but liability

may arise from breach of a positive legal duty imposed by law due to the relationships of the parties). Unlike on the applicability of a policy exclusion to avoid a breach of contract claim, on a bad faith claim, it is the insured with the burden to show a lack of good faith. *Id.* “Mere refusal to pay an insurance claim is not, in itself, conclusive of an insurer’s bad faith.” *Helmick v. Republic-Franklin Ins. Co.*, 39 Ohio St. 3d 71, 76 (1988). Even an erroneous basis for denial of coverage is not necessarily actionable as a claim for bad faith. *East Liverpool v. Owners Ins. Co.*, 2021-Ohio-1474, ¶ 51 (7th Dist.) (“Even an incorrect result does not mean bad faith.”).

{¶54} “An insurer fails to exercise good faith in the processing of a claim of its insured where its refusal to pay the claim is not predicated upon circumstances that furnish reasonable justification therefor.” *Zoppo v. Homestead Ins. Co.*, 71 Ohio St.3d 552 (1994), paragraph one of the syllabus. Where the insurer’s conduct is based on a belief of no liability, “such a belief may not be an arbitrary or capricious one. The conduct of the insurer must be based on circumstances that furnish reasonable justification therefor.” *Hart v. Republic Mut. Ins. Co.*, 152 Ohio St. 185, 188 (1949) (and negligence is not a lack of good faith).

{¶55} A bad faith claim against an insurer may allege a breach of the duty of good faith by refusing to satisfy an insured’s claim without reasonable justification where there was no lawful basis for denial of the claim. *Zoppo* at 554. Or, a bad faith claim may allege a lack of reasonable justification for the refusal due to the failure to determine (by investigating) whether there was a lawful basis for the refusal. *Id.*; see also *Ballard v. Nationwide Ins. Co.*, 2015-Ohio-4474, ¶ 18 (7th Dist.) (the first type of bad faith claim hinges on the success of the contract claim while the second type is not *as dependent* on the contract claim, as the insured must only establish the insurer had no reasonable justification for failing to ascertain whether the refusal had a lawful basis).

{¶56} Appellant’s complaint set forth a consolidated count against the insurance company labeled “Breach of Contract and Bad Faith” and stating the refusal to provide coverage was a breach of the contract. In setting forth the facts, the incorporated prior paragraphs in the complaint referred to the insurance company’s finding that the demolition was excluded by the policy and alleged the insurance company “failed to exercise good faith in the processing of the claim since its refusal to pay the claim was

not predicated upon circumstances that furnish reasonably justification therefor as it was an unlawful demolition and destruction and an act of vandalism.”

{¶57} The insurance company’s summary judgment motion argued the refusal to pay based on the plain language of the exclusions was reasonably justified. It was pointed out even when a denial of coverage turns out to be incorrect, there is no liability if the coverage was fairly debatable. An affidavit authenticated business records including the insurance policy and the letter denying coverage. This denial letter explained the insurance company hired a named independent adjustment firm to investigate the claim on the insurance company’s behalf and retained a special investigator to assist with the investigation. The investigation concluded the building was demolished by order of the fire chief who deemed it an unsafe vacant nuisance building that was about to collapse.

{¶58} Without mentioning the bad faith claim, the insured’s opposition responded by arguing the language of the exclusion should be read as only excluding proper government demolitions. It was argued there were genuine issues remaining on the propriety of the city’s demolition while confirming, “The cause against the insurance company, here, rises and falls with the underlying civil rights claim because that claim resolves whether the demolition was valid or invalid.” (Opp.S.J. at 2).

{¶59} The insured’s brief on appeal argues the insurer lacked reasonable justification for not analyzing the propriety of the city’s order because it considered any potential complaints against the city irrelevant to the exclusions clause. (Apt.Br. at 2, 13-14). At one point, the insured’s reply brief confirms the dispositive question of the entire appeal is whether the exclusions clause applies regardless of validity of the city’s action. (Apt.Rep.Br. at 2) (stating the insurance company’s legal argument on the immateriality of the insured’s potential complaints against the city “decides the appeal if accepted”). Yet, at another point, the insured’s reply brief points to the second form of a bad faith claim involving the failure to investigate whether the city’s demolition was proper, citing *Ballard*.

{¶60} The insurance company established its investigation led to the discovery that the cause of the building’s demolition was a government order and/or the tearing down was the result of the enforcement of an ordinance or law. The plain language of the policy with its exclusions was cited as the reason for denial. The insured’s complaint admits the existence of government ordered demolition and admits the reason for the

denial of the claim. The “bad faith denial claim hinge[d] on the success of the contract claim.” *East Liverpool* at ¶ 45; see also *Essad v. Cincinnati Cas. Co.*, 2002-Ohio-2002, ¶ 32, 34 (7th Dist.) (where the insured alleges the insurer had no lawful basis to deny coverage, the success of the tort claim hinges on the success of the contract claim); *Ho v. State Farm Fire & Cas. Co.*, 2005-Ohio-5452, ¶ 23 (8th Dist.) (when the insurer learned the cause excluded was reasonable justification for refusing to cover the alleged claim).

{¶61} As reviewed in the contract assignments of error, after applying the plain language of the ordinance enforcement exclusion in favor of the insurance company, the Fifth District rejected the insured’s cross-assignment of error on his bad faith claim, which argued the insurance company lacked reasonable justification for denying his claim. *Popa*, 88 Ohio App.3d at 408 (5th Dist.). Likewise, in the federal case reviewed in the prior assignments of error, the district court concluded: “Because the City’s demolition of the garage properly falls within Allstate’s Code Enforcement exclusion, Allstate also had reasonable justification to deny Miller’s claim for loss to that structure.” *Miller*, 2009 WL 10689362, at *5 (N.D. Ohio) (granting the insurance company summary judgment on the insured’s breach of contract and bad faith claims). Affirming, the Sixth Circuit pronounced: “the district court’s opinion diligently and correctly sets out the undisputed facts and the governing law. Because this court’s issuance of a full opinion would be duplicative and would serve no jurisprudential purpose, we affirm on the basis of the district court’s well-reasoned order of July 20, 2009, granting Allstate’s motion for summary judgment.” *Miller*, 399 Fed.Appx. at 97.

{¶62} As the contract claim was properly decided, as ruled under the prior assignments of error on the plain language of the policy, summary judgment on the bad faith denial claim was likewise proper.

{¶63} Regarding the alleged failure to investigate the propriety of the government action, as set forth in our review at the beginning of this assignment, the complaint did not speak of the investigation but connected the processing to a denial without reasonable justification where the contract was alleged to allow coverage for an unlawful government demolition as alleged to exist here. The insurance company’s summary judgment contained business records showing an investigation occurred after which it was concluded the loss was caused by a government demolition and was thus excluded under the policy language. The opposition to summary judgment did not mention the bad faith

claim, seemingly acknowledging it was dependent on the contract claim. Now, the insured states the insurance company's motion failed to meet its initial summary judgment burden of showing it investigated the background of whether the demolition was valid.

{¶64} The insured's argument is without merit. The investigation form of a bad faith claim still considers the contract claim and its effect on the investigation. See *Ballard*, 2015-Ohio-4474, at ¶ 18 (7th Dist.) (merely observing the second type is not as *dependent* on the contract claim). The insured must still establish the insurer had no reasonable justification in failing to make certain investigations on coverage. See *id.* The insurance company investigated the loss and discovered the fire chief's order. Due to the exclusions, the insurer could⁶ reasonably refrain from making further investigations into the procedure utilized by the city here, any prior notifications from the city, and/or the specific underlying facts for deeming the building unsafe and constituting an emergency.

{¶65} Clearly, the insurance company *did determine* it had a lawful basis for denial, and these types of further investigations became immaterial and are moot. See *East Liverpool*, 2021-Ohio-1474, at ¶ 44, 51 (7th Dist.) (mootness of fact not discovered by insurer); *Ho*, 2005-Ohio-5452, at ¶ 23 (8th Dist.); *Penton Media, Inc. v. Affiliated FM Ins. Co.*, 245 Fed.Appx. 495, 502 (6th Cir. 2007) (upholding summary judgment for the insurer on contract interpretation and also on bad faith where its upheld interpretation made further investigation irrelevant, distinguishing *Zoppo* where the matter insufficiently investigated involved the very lack of evidence on which the insurer denied the claim). As the Eighth District reasoned: "When State Farm discovered the cause of the problem was contamination, it refused to take any further action because damages related to contamination were specifically excluded under the policy. This was a reasonable justification for . . . refusing to incur further expenses in investigating the matter." *Ho*, 2005-Ohio-5452, at ¶ 23 (8th Dist.). Applying the plain language of the exclusionary clause was not only reasonably justified but was correct in this case.

{¶66} In other words, there was a "genuine dispute" that the status of the law on the exclusions clause applied in the denial letter based on the facts discovered, and thus, peripheral facts relevant only under the insured's version of the law (as expressed in the

⁶ As noted above, the insurance company pointed out it never took a position on the propriety of the city's exercise of emergency powers; still, its motion did not mention whether or not it engaged in further investigations on the propriety of the order (or whether the insured informed it of the alleged improprieties).

complaint) could reasonably be omitted from further investigations. See *Motorists Mut. Ins. Co. v. Said*, 63 Ohio St.3d 690, 700 (1992), overruled on other grounds in *Zoppo*, 71 Ohio St.3d 552 at paragraph one of the syllabus (eliminating actual intent from the test, thereby overruling *Said* “to the extent inconsistent herein”). If the potential claims an insured may assert against a city for a demolition order are reasonably judged to be irrelevant to the exclusions clause in the insured’s policy with its own insurance company, then investigation of those claims was not required. Only the tearing down through city ordinance enforcement and/or demolition by order of city authority was relevant in this case, and thus, the investigation reasonably stopped at that point. This assignment of error is overruled.

{¶67} As an additional note, the parties mention the denial letter advised the insured further material could be submitted for review and reconsideration of the denial. If the exclusion clause only covered lawful orders (under a plain reading or due to ambiguity construed against insurer), the insured says this portion of the denial letter would not cure an unreasonable denial. Note the insured’s complaint mentions vandalism but provided no indication the insurance company was advised it accused the city of such act (or whether the insurer was advised the insured believed the city’s demolition was invalid and why before the denial letter or at any time prior to the complaint). The insurance company’s motion shows it obtained government records with the fire chief’s order. See *Barbour v. Household Life Ins. Co.*, 2012 WL 1109993, *9 (N.D. Ohio Apr. 2, 2012) (stating insurer need not interview doctor who generated medical record). “Good faith requires only that the insurer have a ‘reasonable justification’ for its decision. It does not require an insurer to seek all information to ensure a correct decision.” *Id.* As mentioned in our first footnote, an emergency can constitute an exception to pre-deprivation due process. See, e.g., *Parratt*, 451 U.S. at 538–39, overruled on other grounds by *Daniels*, 474 U.S. at 330-333 (but contrary to *Parratt*, negligent conduct by a government official is not a deprivation under the due process clause, which protects against “arbitrary” exercises of power).

{¶68} Even assuming *arguendo* the plain language did not work in the insurance company’s favor on appeal and assuming *arguendo* there was no investigation of facts or law surrounding the propriety of the government order, summary judgment would still be proper. Even under those circumstances, the insurance company’s reading of the

policy would still have been fairly debatable as a matter of law and not arbitrary or capricious, allowing a good faith denial of the claim based on the exclusions clause without investigating facts (against the city) immaterial to their reading of the policy. Such facts would only be relevant if the not-unreasonable contract-interpretation was found to be wrong. “Ohio courts have held that even where the Court rules against an insurer on an issue of contract interpretation, summary judgment is still appropriate where there is a genuine dispute as to the law interpreting the contract.” *Barbour* at * 8 (agreeing with this quote from the insurer’s brief in concluding it was reasonable for the insurer to deny the claim without further investigation on the basis of the face of the insured’s medical records obtained in the investigation indicating intentional failure to disclose diagnosis), citing *Nationwide Mut. Ins. Co. v. Robb*, 1996 WL 199183, *1 (9th Dist. Apr. 24, 1996) (in an appeal and cross-appeal, upholding judgment as a matter of law for insured on contract claim while upholding judgment as a matter of law for insurer on insured’s bad faith claim); see also *Retail Ventures, Inc. v. Natl. Union Fire Ins. Co.*, 691 F.3d 821, 834 (6th Cir. 2012) (“plaintiffs contend that Ohio’s default-ambiguity rule of construction means that an insurer can deny coverage in good faith only if it had reason to believe that its interpretation was the only reasonable one. There is no support for this proposition in Ohio law”).

{¶69} In any event, the plain language showed the denial of the claim was not in bad faith, and the failure to further investigate was reasonably justified as well due to the reliance on the only reasonable interpretation of the pertinent portions of the exclusions clause in conjunction with the policy as a whole. This assignment of error is overruled.

{¶70} For the foregoing reasons, this court affirms the trial court’s judgment.

Waite, P.J., concurs.

Dickey, J. concurs.

For the reasons stated in the Opinion rendered herein, the assignments of error are overruled and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas of Mahoning County, Ohio, is affirmed. Costs to be taxed against the Appellant.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

NOTICE TO COUNSEL

This document constitutes a final judgment entry.