Vendor: SNELL & WILMER L.L.P.
Vendor No: 3536

Check No: 65211
Check Date: 07/30/2020

Date	Invoice No.	Description	GL Account	Amount
07/22/2020	06302020	COURT ORDER CV 20-00419-PHX-SPL	280-.5-1411-01-6904	57,532.86

Total Check Amount 57,532.86

TOWN OF PAYSON
GENERAL ACCOUNT
303 NORTH BEELINE HIGHWAY
PAYSON, ARIZONA 85541

JPMorgan Chase Bank, NA
PAYSON OFFICE (048)
PAYSON, ARIZONA
91-2 / 1221

65211

DATE
07/30/2020

AMOUNT
$57,532.86
VOID AFTER 6 MONTHS

PAY **Fifty Seven Thousand Five Hundred Thirty Two & 86/100 Dollars**

TO THE ORDER OF
SNELL & WILMER L.L.P.
400 EAST VAN BUREN STREET
SUITE 1900
PHOENIX, AZ 85004-2202

TOWN OF PAYSON GENERAL ACCOUNT

Gracie Bailey

⑈65211⑈ ⑆122100024⑆ 901334716⑈

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Rim Country Educational Alliance, et al., Plaintiffs, vs. Thomas P. Morrissey, et al., Defendants.	No. CV 20-00419-PHX-SPL **ORDER**

Pending before the Court is Plaintiffs' Motion for Reasonable Attorneys' Fees and Taxable Costs. (Doc. 31) For the following reasons, the motion will be granted as modified in this Order.

I. Background

Plaintiff Rim Country Educational Alliance ("RCEA") is a political subdivision of the State of Arizona organized under Arizona Revised Statute ("A.R.S.") § 11-952.02 by an intergovernmental agreement executed by the Towns of Payson and Star Valley. (Doc. 1 at 2) The other Plaintiffs are all directors of the RCEA.[1] (Doc. 1 at 2) The purpose of the RCEA is to "further higher or advanced education and work force development." (Doc. 1-2 at 2) On February 26, 2020, Plaintiffs initiated this action seeking injunctive and

[1] The directors include: Larry Sugarman, Richard Richey, and Jennifer Smith. (Doc. 1 at 2)

declaratory relief to void Defendants'[2] attempt to remove Plaintiffs as directors of the RCEA. (Doc. 1) Plaintiffs asked this Court to issue a temporary restraining order ("TRO") and preliminary injunction ("PI") so that Defendants would be enjoined from appointing replacement directors. (Doc. 1) The Court granted Plaintiff's request in part and issued a TRO on February 27, 2020. (Doc. 9)

The Court set a hearing on the PI motion for March 12, 2020. (Doc. 9) On March 5, 2020, the parties filed a joint stipulation to vacate the PI hearing and to instead hold a status conference. (Doc. 20) The parties notified the Court that, on March 3, 2020, the Payson Town Council adopted Resolution 3187, which reversed its previous removal of Plaintiffs as the RCEA directors. (Doc. 20 at 2) The Court granted the parties' stipulation and converted the March 12 hearing into a status conference. (Doc. 22) On March 10, 2020, the parties filed a joint status report disagreeing about whether the case was moot in light of the fact that Plaintiffs were restored as directors. (Doc. 23) The next day, the Court vacated the status conference hearing and lifted the TRO, explaining that there was no longer an imminent threat of irreparable harm. (Doc. 24 at 2) The Court further stated that any arguments regarding mootness could be addressed in the normal course of the case. (Doc. 24 at 2)

On March 30, 2020, the parties filed a joint stipulation of dismissal. (Doc. 27) The Court granted the parties' request and dismissed the case with prejudice on April 2, 2020. (Doc. 28) The Court further ordered Plaintiffs to submit an application for attorneys' fees no later than April 30, 2020. (Doc. 30) Plaintiffs timely submitted their Motion for Reasonable Attorneys' Fees and Taxable Costs. (Doc. 31) Defendants have filed an objection to the application (Doc. 32), and Plaintiffs have filed a reply (Doc. 33).

II. Legal Standard

"The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable

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[2] Defendants include: the Town of Payson; each individual member of the Payson Town Council; and Thomas P. Morrissey, Mayor of the Town of Payson. (Doc. 1 at 1)

hourly rate." *Hensley v. Eckhart*, 461 U.S. 424, 433 (1983). This calculation is known as the "lodestar method" and it provides an objective basis on which to make an initial estimate of the value of an attorney's services. *Id.* The party requesting the fees must submit evidence supporting the reasonableness of the hours worked and the rates claimed. *Id.* "Where the documentation of hours is inadequate, the district court may reduce the award accordingly." *Id.*

In the Ninth Circuit, there are several factors that a district court may use when determining the reasonableness of an attorneys' fees request. *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975) (abrogated on other grounds). Such factors include: "(1) the time and labor required, (2) the novelty and difficulty of the questions involved, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the attorney due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the undesirability of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases." *Id.* (internal quotations and citation omitted). However, if a district court chooses to reduce the lodestar amount, it must do so with "a concise but clear explanation of its reasons." *Ferland v. Conrad Credit Corp.*, 244 F.3d 1145, 1149 (9th Cir. 2001) (internal quotations and citation omitted). The party opposing a fee application bears the burden of establishing that a reduction is justified. *Gates v. Deukmejian*, 987 F.2d 1392, 1397-98 (9th Cir. 1992).

III. Discussion

Plaintiffs move this Court for an award of attorneys' fees in the amount of $66,191.06, and costs in the amount of $1,341.80 pursuant Federal Rule of Civil Procedure 54(d) and Local Rule of Civil Procedure 54.2. (Doc. 31 at 2) Plaintiffs submit a declaration of fees and costs signed by counsel Brett W. Johnson, an invoice of attorneys' fees, a bill of costs, and their fee agreement. (Doc. 31-1)

In response, Defendants agree that Plaintiffs are entitled to fees and costs but argue that the amount requested is disproportionate to the length and complexity of the case. (Doc. 32 at 2-3) Specifically, Defendants argue that Plaintiffs' counsel have engaged in extensive double billing and their average hourly rate of $389.56 is too high for the legal services that were performed. (Doc. 32 at 3-5) Defendants maintain that the average hourly rate in Arizona is $304 per hour and Plaintiffs' counsel's rate far exceeds that. (Doc. 32 at 4) Defendants argue that the Court should reduce the fee request by at least twenty-eight percent (28%). (Doc. 32 at 4)

After the Court's own review of Plaintiffs' motion and itemization of fees, the Court has calculated the lodestar to be $56,191.06. The Court subtracted $10,000 from Plaintiffs' initial request of $66,191.06. The reduction represents the amount billed for entries that the Court finds duplicative, vague, and/or unnecessary. The Court believes this most reasonably reflects Plaintiffs' counsel's time spent working on this case. The Court does not find merit in Defendants' argument regarding the average billing rate and will not reduce the fee request on that basis. *Kaufman v. Warner Bros. Enter. Inc.*, No. CV-16-02248-PHX-JAT, 2019 WL 2084460, at *12 (D. Ariz. May, 13, 2019) (quoting *Jackson v. Wells Fargo Bank N.A.*, No. CV-13-00617-PHX-SPL, 2015 WL 13567069, at *2 (D. Ariz. Oct. 23, 2015) (finding that reliance on a statewide average hourly rate alone is insufficient to establish that the billing rate charged by counsel was excessive or unreasonable). As to costs, the Court has reviewed Plaintiffs' bill of costs and finds that the requested amount of $1,341.80 is reasonable.

Accordingly,

IT IS ORDERED that Plaintiffs' Motion for Reasonable Attorneys' Fees and Taxable Costs (Doc. 31) is **granted** as modified.

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IT IS FURTHER ORDERED that Plaintiffs are entitled to an award of $56,191.06 in reasonable attorneys' fees and $1,341.80 in costs.

Dated this 22nd day of June, 2020.

Honorable Steven P. Logan
United States District Judge

AMRRP

RECEIVED
MAR – 3 2020
TOWN CLERK
TOWN OF PAYSON

CERTIFIED MAIL – RETURN RECEIPT REQUESTED

March 2, 2020

Town of Payson
Tracie Bailey
303 N. Beeline Hwy
Payson, AZ 85541

Thomas Morrissey
303 N. Beeline Hwy
Payson, AZ 85541

Janell Sterner
303 N. Beeline Hwy
Payson, AZ 85541

James Ferris
303 N. Beeline Hwy
Payson, AZ 85541

Christopher Higgins
303 N. Beeline Hwy
Payson, AZ 85541

Steven Smith
303 N. Beeline Hwy
Payson, AZ 85541

Susan Tubbs-Avakian
303 N. Beeline Hwy
Payson, AZ 85541

Barbara Underwood
303 N. Beeline Hwy
Payson, AZ 85541

RE: **Rim Country Educational Alliance, a political subdivision and separate legal entity organized under A.R.S. § 11-952.02; Larry Sugarman, an individual; Richard Richey, an individual; Jennifer J. Smith, an individual, Plaintiffs, v. Thomas P. Morrissey, Town of Payson Mayor, in his official capacity and personal capacities; Janell Sterner, Town of Payson Vice-Mayor and Councilmember, in her official and personal capacities; James L. Ferris, Town of Payson Councilmember, in his official and personal capacities; Christopher Higgins, Town of Payson Councilmember, in his official capacity; Steven L. Smith, Town of Payson Councilmember, in his official capacity; Susan Tubbs-Avakian, Town of Payson Councilmember, in her official and personal capacities; Barbara Underwood, Town of Payson Councilmember, in her official capacity; the Town of Payson Town Council, a legislative body of the State of Arizona; the Town of Payson, a municipal corporation of the State of Arizona, Defendants.**

Case No.:	CV-20-00419-PHX-SPL
Venue:	United States District Court
Claim #:	GL103384
Pool Member:	Town of Payson
Coverage Agreement #:	2000156

Dear Sir/Madam:

Southwest Risk Services is the claims administrator for the Arizona Municipal Risk Retention Pool ("the Pool"), of which the Town of Payson is a Member. We received the above-referenced complaint filed by the plaintiffs.

14902 NORTH 73RD STREET ♦ SCOTTSDALE, ARIZONA 85260
MAIN: 602.996.8810 ♦ TF: 888.309.4339 ♦ FAX: 602.996.9045
WWW.AMRRP.ORG

We have referred the defense of this matter to Bill Doyle with The Doyle Firm, P.C. The firm's address is 1313 East Osborn Road, Suite 220, Phoenix, Arizona 85014. Bill's phone number is 602-240-6711.

The Pool's defense of the Town of Payson, Thomas Morrissey, Janell Sterner, James Ferris, Christopher Higgins, Steven Smith, Susan Tubbs-Avakian, and Barbara Underwood is being provided pursuant to a reservation of rights. This letter will explain the Pool's coverage position in this matter.

The merits of the allegations in the complaint are under investigation. The plaintiffs allege that the council removed three directors of Rim Country Educational Alliance ("RCEA") in violation of due process rights without due cause. Count one of the complaint is for declaratory relief-procedural due process. Count two is for declaratory relief that the "for cause" condition was not met. Count three is for breach of contract. Count four is for breach of implied covenant of good faith and fair dealing and count five is for injunctive relief.

The plaintiffs are seeking a judgement from the court to declare that the removal of the directors is a violation of their federal and state due process rights. They also seek a determination that a statement made by Councilperson Ferris was legally deficient to find "for cause". The plaintiffs seek a declaration that the defendants may only appoint and remove directors. They ask to enjoin the defendants from acting contrary to the terms of the contract and enforces the agreement "for cause" removal, stay the Council's removal vote, and annul and void the removal determination. Finally the plaintiffs ask for attorney fees, costs and interest on fees and costs.

The Pool has considered this claim under Coverage Agreement 2000156 issued to the Town of Payson for the rating period of July 1, 2019 to July 1, 2020. The applicable coverage form is the Municipal Liability Coverage Agreement (form AZMLC 06/19), and it states, in relevant part, as follows:

SECTION I – COVERAGE AGREEMENTS

A. GENERAL LIABILITY COVERAGE AGREEMENT

1. The Pool will pay "damages" the "member is legally obligated to pay for "bodily injury", "property damage" or "personal and advertising injury". This Coverage Agreement only applies if:

   a. prior to the effective date of this policy, no "member knew that the "claim" for "bodily injury", "property damage" or "personal and advertising injury" was reasonably likely to be made;

   b. the "bodily injury" or "property damage" is caused by an "occurrence" which happened after the "retroactive date";

   c. the "claim" is first made against any "member during the "rating period", and the "claim" is reported to the Pool in writing during the "rating period" or any applicable extended reporting period; and

d. the "bodily injury" or "property damage" is first sustained or the "personal and advertising injury" is first committed after the "retroactive date" and prior to the end of the "rating period" in the "coverage territory".

2. The Pool has the right and duty to defend the "member against any "suit" seeking covered "damages". The Pool may, at the Pool's discretion, investigate any "claim" and settle any "claim" or "suit."

3. The Pool has no obligation to pay "damages", defend any "member or incur any expense after the applicable limit of liability shown in the Declarations has been paid.

B. MUNICIPAL MANAGEMENT PRACTICES LIABILITY COVERAGE AGREEMENT

1. The Pool will pay "damages" the "member" is legally obligated to pay for a "wrongful act". This Coverage Agreement only applies if:

a. prior to the effective date of this policy, no "member knew that the "claim" resulting from a "wrongful act" was reasonably likely to be made;

b. the "wrongful act" happened after the "retroactive date";

c. the "claim" is first made against any "member" during the "rating period", and the "claim" is reported to the Pool in writing during the "rating period" or any applicable extended reporting period; and

d. the "wrongful act" is first committed after the "retroactive date" and prior to the end of the "rating period" in the "coverage territory'.

2. The Pool has the right and duty to defend the "member against any "suit" seeking covered "damages". The Pool may, at the Pool's discretion, investigate any "claim" and settle any "claim" or "suit."

3. The Pool has no obligation to pay "damages", defend any "member" or incur any expense after the applicable limit of liability shown in of the Declarations has been paid.

Damages attributable to "bodily injury", "property damage" or "personal and advertising injury" will be covered by this policy only to the extent they fall within the coverage provided by Coverage Agreement

SECTION II - COVERED EXPENSES AND COSTS

A. For any “claim” the Pool investigates or settles or any “suit” the Pool defends, the Pool will pay:

1. "Loss adjustment expense" the Pool incurs, subject to the "loss adjustment expense" limitations in this section and other "member" obligations contained in this Policy.

2. The cost of bonds to release attachments, but only for bond amounts within the applicable Limit Of Liability. The Pool does not have to furnish these bonds.

3. All reasonable expenses incurred by a "member" at the Pool's request to assist in the investigation or defense of the "claim" or "suit", including actual loss of earnings up to $100 a day because of time off from work.

4. All costs, other than attorney's fees, taxed against the "member in the "suit".

5. Prejudgment interest awarded against the "member on that part of the judgment the Pool pays. If the Pool makes an offer to pay the applicable Limit Of Liability, the Pool will not pay any prejudgment interest incurred that accrued after the offer.

6. All interest on the full amount of any judgment that accrues after entry of the judgment and before the Pool has paid, offered to pay, or deposited in court the part of the judgment that is within the applicable Limit of Liability.

These payments will not reduce the Limits Of Liability unless otherwise noted in the Limits of Liability section.

B. FOR ANY "DECLARATORY RELIEF CLAIM" OR "INJUNCTIVE RELIEF CLAIM" THAT IS NOT BROUGHT WITH A "CLAIM" FOR "DAMAGES" THE POOL WILL PAY:

1. 50% of the first $25,000 of "loss adjustment expense; and

2. 25% of the next $25,000 of "loss adjustment expense".

3. The "Named Member" shall pay all "loss adjustment expense" in excess of $50,000.

   a. The Pool may pay any part or all of the "loss adjustment expense" amount to effect settlement of any "claim" or "suit". The "Named Member" shall promptly reimburse the Pool for its share of "loss adjustment expense".

   b. The most the Pool will pay for all "loss adjustment expense" arising out of "injunctive relief claims" and "declaratory relief claims" made during the "rating period" is $100,000.

SECTION III - EXCLUSIONS

This Policy does not apply to:

D. BREACH OF CONTRACT

"Damages" arising out of any breach of an express or implied contract or warranty including, but not limited to, any "claim" for amounts due under the terms of any contractual obligation. This exclusion does not apply to liability the "member" would have in the absence of the contract.

E. CONTRACTUAL LIABILITY

"Damages" which a "member" is obligated to pay by reason of the assumption of liability in a contract. This Exclusion does not apply to liability for "damages":

1. That the "member" would have in the absence of the contract; or

2. Assumed by a "member" in a "covered contract", provided the "wrongful act" or "occurrence" giving rise to the "damages" occurs subsequent to the execution of the contract.

Q. GENERAL LIABILITY

"Damages" for "bodily injury', "property damage" or "personal and advertising injury" are not covered by Municipal Management Practices Liability Coverage Agreement in paragraph B above. "Damages" for "bodily injury", "property damage" or "personal and advertising injury" will be covered only to the extent they fall within the coverage provided under the General Liability Coverage Agreement in paragraph A above. This exclusion does not apply if the "bodily injury", "property damage" or "personal and advertising injury" is sustained in the course of lawful and official law enforcement operations In that case, those "damages" will only be covered under the Municipal Management Practices Liability Coverage Agreement.

CC. OTHER THAN MONEY DAMAGES

Any loss, cost or expense arising out of any judgment for declaratory relief or injunctive relief.

SECTION VII – DEFINITIONS

D. "BODILY INJURY" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

F. "CLAIM" means a written demand for money or services

H. "COVERED CONTRACT" means:

1. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to the "member" or temporarily occupied by the "member" with permission of the owner is not a "covered contract";

2. A sidetrack agreement;

3. Any easement or license agreement, including those for vehicle or pedestrian private railroad crossings at grade, but not including easements or license agreements in connection with construction or demolition operations on or within 500 feet of a railroad;

4. An obligation, as required by ordinance, to indemnify a municipality;

5. An elevator maintenance agreement;

6. That part of any other contract or agreement pertaining to the "member's" municipal activities under which the "member" assumes the tort liability of another party to pay "damages" to a third person or organization if the contract or agreement is made prior to the date of the "wrongful act" giving rise to claimed "damages". Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph 6 does not include that part of any contract or agreement:

a. That indemnifies a railroad for "damages" arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;

b. That indemnifies an architect, engineer or surveyor for "damages" arising out of:

(1) Preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings, designs and specifications; or

(2) Giving directions or instructions, or failing to give them, if that is the primary cause of the "damages"; or

c. Under which the "member", if an architect, engineer or surveyor, assumes liability for "damages" arising out of the "member's" rendering or failure to render professional services.

J. "DAMAGES" means money paid to another for injury.

"Damages" does not include:

1. Taxes, fines or penalties, including those imposed under the Internal Revenue Code or any similar state or local law;

2. Repayment of any tax or assessment that was wrongfully obtained, or any interest on such tax or assessment; or

3. Amounts paid or payable for the purchase or permanent acquisition of property or property rights, or for the right to permanently enforce an ordinance, regulation, or restriction on the use of property.

L. **"DECLARATORY RELIEF CLAIM"** means any "claim" arising out of a request for a court of competent jurisdiction to decide the rights and obligations of the parties pursuant to the state of Arizona or Federal statutes on declaratory relief.

R. "INJUNCTIVE RELIEF CLAIM" means any "claim" arising out of an injunction or request for an injunction:

1. Forbidding the "member" to do some act, which the "member" intends or is attempting to commit;

2. Restraining the "member" in the continuance of an act; or

3. Requiring the "member" to undertake requested action pursuant to the state of Arizona or Federal statutes on injunctive relief.

W. **"LOSS ADJUSTMENT EXPENSE"** means expenses incurred and allocated to any "claim" or "suit" for investigation, defense, and administration.

"Loss adjustment expense" does not include:

1. Salaries and expenses of employees of the Pool or the Pool's Administrator, other than that portion of the Pool's employed attorney's fees, salary and expenses allocated to a specific "claim" or "suit"; or

2. Salaries of the "Named Member's" "employees" or the "member's" office expenses.

Z. **"OCCURRENCE"** means an accident, including continuous or repeated exposure to substantially the same general harmful conditions. A series of "occurrences" related by cause, fact or service will be considered one "occurrence" deemed to have only occurred when the first "occurrence" in the series happened.

BB. **"PERSONAL AND ADVERTISING INJURY"** means injury arising out of the following offenses:

1. False arrest or imprisonment;

2. Malicious prosecution;

3. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy;

4. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;

5. Oral or written publication, in any manner, of material that violates a person's right of privacy;

6. The use of another's advertising idea in the "Named Member's" "advertisement";

7. Infringing upon another's copyright, trade dress or slogan in the "Named Member's" "advertisement"; or

8. Assault or battery committed for the purpose of protecting persons or property or incident to an arrest.

For the offense of malicious prosecution, the injury is deemed to have been occurred and the offense committed only at the time the prosecution was initiated.

Any series of "personal and advertising injury" offenses related by cause, fact or service will be considered one "personal and advertising injury" offense deemed to only have been committed when the first "personal and advertising injury" offense was committed.

FF. "PROPERTY DAMAGE" means:

1. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

2. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

Electronic data or information is not tangible property for purposes of this definition.

SS. "WRONGFUL ACT" means any actual or alleged negligent act, error, omission, misstatement, misleading statement, neglect, or breach of duty by a "member.

However, "wrongful act" shall not mean any act:

1. Which is criminal, wanton or reckless;

2. Which constitutes:

   a. Malfeasance in office;

   b. Willful neglect of duty;

   c. Bad faith;

   d. Dishonesty; or

   e. The willful violation of a statute or ordinance.

3. For which the "Named Member" is not authorized to indemnify any person by law or public policy.

Any series of "wrongful acts" related by cause, fact or service will be considered one "wrongful act" deemed to have only happened when the first "wrongful act" in the series happened.

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Damages attributable to "BODILY INJURY", "PROPERTY DAMAGE" or "PERSONAL AND ADVERTISING INJURY" caused by an "OCCURRENCE" would be covered by this policy only to the extent they fall within the coverage provided by Coverage Agreement A. The complaint alleges no "BODILY INJURY", "PROPERTY DAMAGE" or "PERSONAL AND ADVERTISING INJURY" caused by an "OCCURRENCE" or accident. Therefore, there is no coverage available under Coverage A, the GENERAL LIABILITY COVERAGE AGREEMENT.

Damages resulting from a "WRONGFUL ACT" will be covered by this policy only to the extent they fall within the coverage provided by Coverage B, the MUNICIPAL MANAGEMENT PRACTICES LIABILITY COVERAGE AGREEMENT. The complaint does not allege any "WRONGFUL ACT", therefore, there is no coverage available under Coverage B.

The plaintiffs have alleged breach of contract. Any "damages" for breach of contract are specifically excluded and are not covered by the Coverage Agreement.

Attorney fees and costs are not considered money paid to another for an injury as outlined in the definition of "damages". Additionally, attorney fees are not included as an additional coverage. Accordingly, there is no coverage for any award of attorney fees and costs.

In the absence of a claim for "DAMAGES", these allegations do trigger a defense of the matter due to the definition of "DECLARATORY RELIEF CLAIM" and "INJUNCTIVE RELEIF CLAIM". This coverage provides that the Pool will pay 50% of the first $25,000 of "loss adjustment expenses" and then 25% of the next $25,000 of "loss adjustment expense". No loss payments are due under the declaratory/injunctive relief coverage. The City would be responsible for remaining amount due as well as 100% of anything exceeding $50,000. Furthermore, no deductible is applied to this limited coverage.

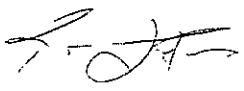
The Pool will continue to provide a defense and provide indemnity coverage for covered damages up to the limits referenced herein. You should be aware that you have the right to retain independent legal counsel, at your own cost, to monitor and assist in your defense. We, and any attorneys we engage, will cooperate with any counsel you retain.

By setting forth the foregoing provisions, the Pool is reserving all rights to review, investigate, analyze and determine coverage under the Coverage Agreement. In investigating the claim or defending the lawsuit, the Pool is not waiving any rights or admitting any obligation under the Coverage Agreement.

The Pool reserves the right to review any additional claims or lawsuits or amendments to the above-referenced lawsuit to make a separate determination as to whether either a defense or indemnity might be provided. Our decision is based only on the allegations in the lawsuit and the facts as presented to us to date and should not be construed as applicable to a new or amended claim or suit. Our right to have notice of either situation is reserved, as are the notice conditions of the coverage form.

In the event you have any questions, or would like to discuss this matter further, please do not hesitate to contact me.

Sincerely,



P & C Litigation Specialist
Direct: (602) 368-6640

cc: Bill Doyle (via email only to wdoyle@doylelawgroup.com)

Justin Pierce
4711 E. Falcon Dr., Suite 111
Mesa, AZ 85215