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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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American Family Mutual Insurance Co., a)
Wisconsin corporation,

No. CV 07-02237-PHX-NVW

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Plaintiff,

ORDER

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vs.

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National Fire & Marine Insurance Co., a)
foreign corporation; et al.,

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Defendants.

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Before the Court is National Fire & Marine Insurance Co.’s Final Motion for Attorneys’ Fees and Costs (Doc. 1030). National Fire & Marine requests an award of \$46,200.10¹ in attorneys’ fees and non-taxable costs.

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In this action, Plaintiff American Family Mutual Insurance Co. sued numerous insurance companies for equitable contribution related to settlement of an underlying multimillion dollar construction defect case. To reduce unnecessary litigation expense, the equitable contribution action proceeded in phases that focused on common defenses. National Fire & Marine obtained summary judgment for one of its insureds during the first phase and summary judgment for its remaining insureds during the second phase. Although the first phase summary judgment for the one insured was reversed on appeal,

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¹National Fire & Marine initially requested \$46,317.60, but concedes that \$117.50 was inadvertently included twice in its original request.

1 National Fire & Marine obtained a final judgment in its favor for that insured on remand.
2 Thus, National Fire & Marine prevailed entirely on Plaintiff's equitable contribution
3 action.

4 Plaintiff's objections to specific time entries submitted by National Fire & Marine
5 are overruled except for one duplicative entry in the amount of \$117.50. As previously
6 decided, monitoring litigation related to the defenses of other Defendants was reasonably
7 related to the defense of National Fire & Marine, and Plaintiff could have controlled costs
8 incurred searching for relevant documents in the voluminous document depository by
9 producing the documents responsive to discovery requests directly to Defendants.

10 National Fire & Marine is eligible for award of attorneys' fees and non-taxable
11 costs under A.R.S. § 12-341.01(A). None of the factors to be considered in determining
12 entitlement under § 12-341.01(A) weighs against a fee award, and awarding fees to the
13 successful parties provides incentive for all parties to closely assess the likelihood of
14 success in their litigation strategies. *See Associated Indem. Corp. v. Warner*, 143 Ariz.
15 567, 694 P.2d 1181 (1985).

16 On March 4, 2010, judgment was entered against Plaintiff and in favor of National
17 Fire & Marine in the amount of \$16,596.00 for attorneys' fees and \$0.00 for non-taxable
18 costs, plus interest at the federal rate from the date of judgment until paid, based on
19 National Fire & Marine prevailing on first phase summary judgment. (Doc. 875.) The
20 present award includes the amount awarded March 4, 2010, and supersedes the March 4,
21 2010 judgment in National Fire & Marine's favor.

22 On December 20, 2010, judgment was entered in favor of National Fire & Marine
23 and against Plaintiff in the amount of \$228,688.50 for attorneys' fees, plus interest at the
24 federal rate from the date of judgment until paid. (Doc. 1008.) The present award does
25 not include and is made in addition to the amount awarded in the judgment of December
26 20, 2010.

1 IT IS THEREFORE ORDERED that National Fire & Marine Insurance Co.'s
2 Final Motion for Attorneys' Fees and Costs (Doc. 1030) is granted in the amount of
3 \$46,200.10 for attorneys' fees and non-taxable costs.

4 IT IS FURTHER ORDERED that the Clerk enter judgment pursuant to Fed. R.
5 Civ. P. 54(d) and LRCiv 54.2 against Plaintiff American Family Mutual Insurance
6 Company and in favor of National Fire & Marine Insurance Company for \$46,200.10 for
7 attorneys' fees and non-taxable costs, plus interest at the federal rate from the date of
8 judgment until paid.

9 DATED this 6th day of April, 2012.

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13 Neil V. Wake
14 United States District Judge
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