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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

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Empire Fire and Marine Insurance Company,

No. CV 07-675-PCT-MHM

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Plaintiff,

ORDER

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vs.

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Judita Bittermann-Halbreich; and Klaus Bloch,

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Defendants.

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Pending before the Court is Plaintiff Empire Fire and Marine Insurance Company's ("Empire's") Motion for Award of Attorney's Fees. (Doc. # 31) On March 29, 2007, Empire filed this declaratory judgment action seeking a judicial determination that there was no coverage under the Empire Policy for any claims asserted by Defendant Judita Bittermann-Halbreich in Coconino County Civil Cause No. CV-2006-0645. Defendant moved to dismiss the complaint on the grounds that the Court should exercise its discretion to decline jurisdiction in favor of the parallel state court action. (Doc. # 12) On September 8, 2008, the Court entered judgment in Defendant's favor dismissing the complaint. (Doc. # 29) Thereafter, Defendant moved for an award of attorney's fees in the amount of \$19,846.50.

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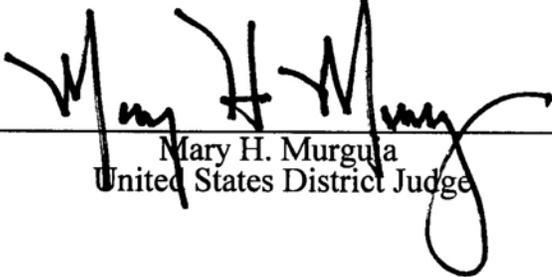
Plaintiff filed a Response, arguing, among other things, that because Defendant has not yet made a recovery under her contingency fee agreement, she cannot recover attorney's

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1 fees. In her Reply, Defendant agrees with Plaintiff that fees should not be awarded until
2 there is a recovery, see Nationwide Mut. Ins. Co. v. Stevens, 166 Ariz. 372, 802 P.2d 1071
3 (Ariz. App. 1990), and requests that the Court defer ruling on the attorney fees application
4 until the underlying case is resolved. Accordingly,

5 **IT IS ORDERED** denying without prejudice Plaintiff's Motion for Award of
6 Attorney's Fees. (Doc. # 31) Plaintiff may renew her request for attorney's fees in the event
7 she is the prevailing party on the underlying claim.

8 DATED this 24th day of February, 2009.

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12 Mary H. Murguía
13 United States District Judge
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