

1 **WO**

2

3

4

5

6

IN THE UNITED STATES DISTRICT COURT

7

FOR THE DISTRICT OF ARIZONA

8

9

Empire Fire and Marine Insurance Company,

No. CV 07-675-PHX-MHM

10

Plaintiff,

AMENDED ORDER

11

vs.

12

13

Judita Bittermann-Halbreich; and Klaus Bloch,

14

Defendants.

15

16

17

Pending before the Court is Defendant Judita Bittermann-Halbreich’s Motion for Award of Attorney’s Fees. (Doc. # 31) On March 29, 2007, Plaintiff Empire Fire and Marine Insurance Company (“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 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.

27

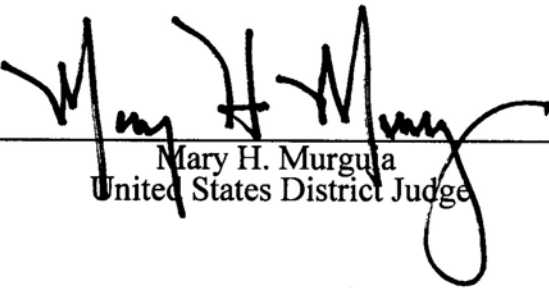
Plaintiff filed a Response, arguing, among other things, that because Defendant has not yet made a recovery under her contingency fee agreement, she cannot recover attorney’s

28

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 Defendant's Motion for Award of
6 Attorney's Fees. (Doc. # 31) Defendant may renew her request for attorney's fees in the
7 event she is the prevailing party on the underlying claim.

8 DATED this 26th day of February, 2009.

9
10
11 
12 _____
13 Mary H. Murgula
14 United States District Judge
15
16
17
18
19
20
21
22
23
24
25
26
27
28