

Scottsdale seeks a judicial determination of its duties with respect to a judgment entered against the City of Hazleton in a matter previously litigated before this Honorable Court at Docket No. 3:06-cv-01586, captioned Lozano v. City of Hazleton (hereinafter, the “Underlying Action”).

I. THE PARTIES

1. Plaintiff, Scottsdale Insurance Company (hereinafter "Plaintiff") is a stock insurance company duly authorized to issue policies of insurance in the Commonwealth of Pennsylvania. Plaintiff is organized under the laws of the state of Arizona, with its principal place of business located at 8877 North Gainey Center Drive in Scottsdale, Arizona 85258.

2. Defendant, City of Hazleton, Pennsylvania, is a political subdivision organized and existing under the laws of Pennsylvania and maintaining its principle place of business at 40 North Church Street, Hazleton, Pennsylvania 18201.

3. Necessary Party Defendant Pedro Lozano was a plaintiff in the Underlying Action, in which he was identified only as a resident of the City of Hazleton and the owner of multiple rental units within the City of Hazleton. There is no address of record for this Defendant. However, upon information and belief, Mr. Lozano resides at 638 W Diamond Ave Hazleton, PA 18201-4936

4. Necessary Party Defendant Casa Dominica ¹ of Hazleton, Inc. was a plaintiff in the Underlying Action, in which it was described as a Pennsylvania non-profit organization designed to promote the Hispanic culture and empower the Hispanic community of Hazleton. The address maintained by this Defendant with the Commonwealth of Pennsylvania, Department of State, Corporations Bureau is 317 Washington Street Freeland, Pennsylvania 18224.

5. Necessary Party Defendant Hazleton Hispanic Business Association was a plaintiff in the Underlying Action, in which it was described as a Pennsylvania non-profit organization designed to promote the business interests of its members. The address maintained by this Defendant with the Commonwealth of Pennsylvania, Department of State, Corporations Bureau is 643 North Vine Street Hazleton, Pennsylvania 18201.

6. Necessary Party Defendant Pennsylvania Statewide Latino Coalition was a plaintiff in the Underlying Action, in which it was described as a Pennsylvania non-profit organization and a non-partisan alliance of Latino leaders, organizations, community activists, students and individuals that that advocates for Latinos in the Commonwealth of Pennsylvania. The address maintained by this

¹ This Party is identified in the Underlying Action as both Casa Dominica and Casa Dominicana. Plaintiff has utilized the spelling employed by the Court in its July 26, 2007 decision and verdict.

Defendant with the Commonwealth of Pennsylvania, Department of State, Corporations Bureau is 2038 North Hancock Street Philadelphia, Pennsylvania 19122.

7. The remaining parties to Civil Action No. 06-1586 have not been included as Necessary Party Defendants, because: (a) the claims advanced on behalf of Humberto Hernandez were dismissed by the court for failure to present any evidence on his behalf (See No. 06-1586, Doc. 409, p. 191, fn. 84); (b) Rosa Lechuga and Jose Luis Lechuga were determined by the Court to lack standing in the underlying action (See No. 06-1586, Doc. 409, pp. 190-191); and (c) the John Doe Defendants have never been identified on the record and Plaintiff has no means of naming or serving them.

II. JURISDICTION

8. This matter is a declaratory judgment action pursuant to 28 U.S.C. §2201 and §2202 based upon a contract of insurance issued by Plaintiff to its Insured, the City of Hazleton, a political subdivision of the Commonwealth of Pennsylvania located in Hazleton, Pennsylvania.

9. Jurisdiction is founded upon diversity of citizenship, pursuant to 28 U.S.C. §1332(a) since there is complete diversity of citizenship between Plaintiff

and the Defendants and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

10. Venue is appropriate in the Middle District of Pennsylvania pursuant to 28 U.S.C. §1391, as the insurance contract at issue was issued in the Middle District, the location of the City of Hazleton is in the Middle District, and the events at issue in the underlying case all took place in the Middle District.

11. An actual case and controversy of a justiciable nature exists between Plaintiff and the City of Hazleton involving the rights and obligations of those parties under the policy of insurance and dependent upon the construction of said contract of insurance, and the controversy may be determined by a judgment of this, without other, suits.

12. All other identifiable persons or entities who have or claim any interest in the matters in controversy or who would be affected by the declarations made by this Court have been made a party to this action.

III. FACTS

(a) THE UNDERLYING CASE

13. On or about August 15, 2006, a civil complaint was filed against the City of Hazleton by fourteen (14) Plaintiffs, consisting of both individuals and non-profit entities, who challenged the validity of Ordinances adopted by City of

Hazleton officials. The civil action was docketed in the United States District Court for the Middle District of Pennsylvania to No. 3:06-cv-01586 (hereinafter referred to as the “Underlying Action”).

14. On October 30, 2006, the plaintiffs in the Underlying Action (hereinafter, the “Underlying Plaintiffs”) filed an amended complaint (No. 06-1586, Doc. 29), in response to which the City of Hazleton filed a motion to dismiss on December 1, 2006 (No. 06-1586, Doc. 56).

15. The Underlying Plaintiffs filed a second amended complaint against the City of Hazleton on January 12, 2007 (No. 06-1586, Doc. 82). A true and correct copy of the second amended complaint, without exhibits, is attached hereto and marked as Exhibit “A.”

16. The second amended complaint continued to challenge the validity and enforceability of ordinances adopted by the City of Hazleton. Specifically, the Underlying Plaintiffs challenged the constitutionality and legality of: (1) the City’s “Illegal Immigration Relief Act”, as amended ² (also referred to as the “Revised Immigration Ordinance” and the “IIRA”); and (2) the City’s Ordinance 2006-13,

² This Ordinance was amended during the course of the Underlying Action. The various renditions of the Ordinance were assigned Ordinance Nos. 1006-18, 2006-40, and 2007-6.

which was commonly referred to as the “Property Registration Ordinance.” (See Exh. “A”).

17. The second amended complaint filed in the Underlying Action contained nine causes of action, as follows:

- (1) The Underlying Plaintiffs claimed that the Revised Immigration Ordinance and Tenant Registration Ordinance violated the Supremacy Clause of the United States Constitution, as both ordinances were preempted by federal immigration law. The Underlying Plaintiffs sought a declaratory judgment that the Ordinances were invalid and injunctive relief preventing their implementation or enforcement. No monetary damages were sought in this count of the second amended complaint. (See Exh. “A”, ¶¶ 100-131).
- (2) The Underlying Plaintiffs alleged that the Revised Immigration Ordinance violated their Fourteenth Amendment Due Process rights by failing to provide notice and an opportunity to be heard. The Underlying Plaintiffs sought a declaratory judgment that the Ordinance was invalid and injunctive relief preventing its implementation or enforcement. No monetary damages were

sought in this count of the second amended complaint. (See Exh. “A”, ¶¶ 132-145).

- (3) In Count III, the Underlying Plaintiffs averred that the Revised Immigration Ordinance violated their Equal Protection rights guaranteed by the Fourteenth Amendment. The Underlying Plaintiffs sought a declaratory judgment that the Ordinance was invalid and injunctive relief preventing its implementation or enforcement. No monetary damages were sought in this count of the second amended complaint. (See Exh. “A”, ¶¶ 146-156).
- (4) This count of the Underlying Complaint claimed that the Revised Immigration Ordinance and Tenant Registration Ordinances were discriminatory and violated the Fair Housing Act. The Underlying Plaintiffs sought a declaratory judgment that the Ordinances were invalid and injunctive relief preventing their implementation or enforcement. No monetary damages were sought in this count of the second amended complaint. (See Exh. “A”, ¶¶ 157-164).
- (5) Count V of the Underlying Complaint stated a claim for violation of 42 U.S.C. § 1981, and alleged that the Revised

Immigration Ordinance was discriminatory as applied to the Underlying Plaintiffs. The Underlying Plaintiffs sought a declaratory judgment that the Ordinance was invalid and injunctive relief preventing its implementation or enforcement. No monetary damages were sought in this count of the second amended complaint. (See Exh. "A", ¶¶ 165-172).

- (6) Count VI of the Underlying Complaint alleged that the City of Hazleton adopted the Revised Immigration Ordinance in contravention of the powers granted to it under the Home Rule Charter Law, 53 Pa. C.S. § 2962. The Underlying Plaintiffs sought a declaratory judgment that the Ordinance was invalid and injunctive relief preventing its implementation or enforcement. No monetary damages were sought in this count of the second amended complaint. (See Exh. "A", ¶¶ 173-187).
- (7) In this count of the Underlying Complaint, the plaintiffs alleged that the Tenant Registration Ordinance violated Pennsylvania's Landlord and Tenant Act, 68 P.S. § 250.101, *et seq.* The Underlying Plaintiffs sought a declaratory judgment that the Ordinance was invalid and injunctive relief preventing its

implementation or enforcement. No monetary damages were sought in this count of the second amended complaint. (See Exh. “A”, ¶¶ 188-198).

(8) Count VIII of the Underlying Complaint averred that the Revised Immigration Ordinance and Tenant Registration Ordinance violated the Plaintiffs’ right to privacy under the Pennsylvania and United States Constitutions. The Underlying Plaintiffs sought a declaratory judgment that the Ordinances were invalid and injunctive relief preventing their implementation or enforcement. No monetary damages were sought in this count of the second amended complaint. (See Exh. “A”, ¶¶ 199-213).

(9) The Underlying Plaintiffs alleged in this Count that the City violated its legitimate police powers in adopting the Revised Immigration Ordinance and Tenant Registration Ordinance, and that enforcement of such Ordinances would result in further violation. The Underlying Plaintiffs sought declaratory judgment that the Ordinances were invalid and injunctive relief preventing their implementation or enforcement. No monetary damages

were sought in this count of the second amended complaint. (See Exh. "A", ¶¶ 212-237).

18. Via their Prayer for Relief, the Underlying Plaintiffs sought:
 - (a) a declaratory judgment...declaring the Revised Immigration Ordinance and Tenant Registration Ordinance void because they violate the Supremacy Clause, the Due Process and Equal Protection Clauses of [the] Fourteenth Amendment of the Constitution of the United States, violates {sic} the fundamental rights conferred by 42 U.S.C. § 1981 and the Fair Housing Act...violates {sic} privacy rights conferred by the U.S. and Pennsylvania Constitutions; and violates {sic} Pennsylvania's Home Charter Law...and Landlord and Tenant Act...;
 - (b) an injunction...prohibiting Hazleton and its agents from implementing or enforcing the Revised Immigration Ordinance and the Tenant Registration Ordinance;
 - (c) an order awarding Plaintiffs the costs incurred in this litigation, including attorneys' fees pursuant to 42 U.S.C. § 1988; and
 - (d) such other relief as the Court deems just and proper.

(Exh. "A", pp. 65-67).

19. No monetary damages were sought in any of the nine causes of action contained in the second amended complaint filed in the Underlying Action.

20. The City of Hazleton filed a motion to dismiss the second amended complaint, with statement of facts and supporting brief, on January 23, 2007 (No.

06-1586, Docs. 84, 85, 87). The Underlying Plaintiffs filed a brief in opposition to the second amended complaint and a motion for summary judgment on February 12, 2007 (No. 06-1586, Doc. 106).

21. During the February 22, 2007 pretrial conference, the court determined that the City's motion to dismiss and Underlying Plaintiffs' motion for summary judgment would be consolidated into the preliminary injunction hearing and trial that was already scheduled to commence on March 12, 2007. (No. 06-1586, Doc. 150).

22. Following a full hearing/trial on the merits conducted from March 12, 2007 through March 22, 2007, the Court issued a Decision and Verdict on July 26, 2007 (No. 06-1586, Doc. 209). A true and correct copy of the Decision and Verdict is attached hereto and marked as Exhibit "B."

23. The Court ruled in favor of the Underlying Plaintiffs on Count I. The City's Revised Immigration Ordinance and Tenant Registration Ordinance were found to violate the Supremacy Clause, as both Ordinances were preempted by federal law. (Exh. "B", pp. 100, 107, 121-22, 191).

24. The Court ruled in favor of the Underlying Plaintiffs on Count II, finding that both Ordinances violated the Fourteenth Amendment's procedural due process requirements. (Exh. "B", pp. 139, 191).

25. The Court dismissed the claims asserted in Counts III and IV of the second amended complaint. (Exh. “B”, pp. 154, 156, 165-66, 191-92).

26. The Court found in favor of the Underlying Plaintiffs on Count V, finding that the Ordinances impermissibly violated 42 U.S.C. § 1981. (Exh. “B”, pp. 170, 192).

27. Count VI was partially dismissed, and partially resolved in favor of the Underlying Plaintiffs. (Exh. “B”, pp. 174, 192).

28. Counts VII and VIII of the Underlying Complaint were dismissed. (Exh. “B”, pp. 182-84, 188, 192).

29. The Court ruled in favor of the Underlying Plaintiffs on Count IX, finding that the City’s enactment of unconstitutional ordinances exceeded its legitimate police powers. (Exh. “B”, pp. 186, 192).

30. The Court issued a permanent injunction enjoining the City of Hazleton from enforcing any provision of the Revised Immigration Ordinance or the Tenant Registration Ordinance. (Exh. “B”, p. 190).

31. No monetary damages were awarded to the Underlying Plaintiffs in the Underlying Action. The verdict issued on July 26, 2007, awarded only declaratory and injunctive relief in favor of the Underlying Plaintiffs and against the City of Hazleton. (Exh. “B”).

32. Judgment was entered in favor of the Plaintiffs on July 26, 2007. (No. 06-1586, Doc. 410).

33. Pursuant to an order issued August 16, 2007, the Underlying Plaintiffs are to file a petition for attorneys' fees on or before August 31, 2007. (No. 06-1586, Doc. 413)

34. The City of Hazleton filed a notice of appeal on August 23, 2007, which was amended on August 24, 2007. (No. 06-1586, Doc. 414, 415).

(b) THE SCOTTSDALE POLICY

35. Plaintiff issued a Public Entity policy of insurance to Defendant, City of Hazleton, designated as Policy Number PKS 0000214, effective January 1, 2005 (hereinafter, the "Policy"). A certified copy of the Policy³ is attached hereto as Exhibit "C."

36. The Policy provided insurance coverage to the City of Hazleton, as specified in the Policy, during an applicable renewal policy period of January 1, 2006, through January 1, 2007.

37. The Policy provided Law Enforcement Liability Coverage, which was occurrence based coverage; Public Officials Liability Coverage, which was claims

³ Page numbers have been inserted at the bottom, right corner of each page of the Policy for ease of reference. All citations to the Policy reference such page numbers.

made coverage; and Employment Practices Liability Coverage, which was also claims made coverage. (Id.)

38. Law Enforcement Liability Coverage and the exclusions to same are outlined in the Policy. (See Exh. “C”, pp. 23-32).

39. The Underlying Action does not arise from “law enforcement wrongful acts” or “law enforcement activities,” as defined in the Policy (Exh. “C” at p. 27), and does not allege an occurrence implicating coverage under the Law Enforcement Liability Coverage Form.

40. Employment Practices Coverage and the exclusions to same are outlined in the Policy. (Exh. “C,” pp. 42-51).

41. The Underlying Action does not arise from “employment practices wrongful acts,” as defined in the Policy (Exh. “C” at p. 47), and does not implicate coverage under the Employment Practices Liability Coverage form.

42. With respect to Public Officials Liability Coverage, the Policy provides, in relevant part, as follows:

**PUBLIC ENTITY POLICY
PUBLIC OFFICIALS LIABILITY COVERAGE FORM
CLAIMS MADE COVERAGE**

Throughout this policy the words “you” and “your” refer to the Named Insured in the Common Policy Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words “we,” “us” and “our” refer to the insurance

company shown on the Common Policy Declarations as the insurer.

....

Other words and phrases that appear in quotation marks have special meaning. Refer to SECTION VI – PUBLIC OFFICIALS LIABILITY – DEFINITIONS.

....

SECTION I – COVERAGES

1. INSURING AGREEMENT

We will pay on behalf of the insured all “loss” resulting from “public officials wrongful act(s)” but only with respect to “claims” first made against the insured during the “policy period” or Extended Reporting Period. The “public officials wrongful act(s)” must occur within the “coverage territory.”

2. DEFENSE AND SUPPLEMENTARY PAYMENTS

....

The insured, except at its own cost and for its own account, will not, without our written consent, make any payment, admit any liability, settle any “claim,” assume any obligation, or incur any expense.

We will have the right, but no duty, to appeal any judgment.

(Exh. “C,” p. 34)

SECTION II – EXCLUSIONS

We will not be obligated to make any payment nor to defend any “suit” in connection with any “claim” made against the insured:

....

9. For “claim(s),” demands, or actions seeking relief or redress in any form other than monetary damages, or for any fees, costs, or expenses which the insured may become obligated to pay as a result of any adverse judgment for declaratory relief or injunctive relief; however, we will afford defense to the

insured for “suit(s)” in which monetary damages are requested if not otherwise excluded;

(Exh. “C,” p. 35)

SECTION VI – PUBLIC OFFICIALS LIABILITY – DEFINITIONS

Whenever used in this Coverage Form, the following words have these meanings:

1. “Claim” means a written notice from any party that it is their intention to hold an insured responsible for “loss” resulting from a “public officials wrongful act” covered by this Coverage Form.

....

3. “Loss” means any monetary amount which the insured is legally obligated to pay as a result of “public officials wrongful act(s)” covered by this Coverage Form and will include, but not be limited to, judgments and settlements, but “loss” will not include fines imposed by law, or matters which may be deemed uninsurable under the law pursuant to which this Coverage Form will be construed.

....

5. “Public officials wrongful act” means:

Any actual or alleged:

- a. Error or omission, neglect or breach of duty;
- b. Violation of civil rights protected under 42 USC 1981 et sequential; or
- c. Violation of any state civil rights law;

by you or which arises out of the discharge of duties for you, individually or collectively.

6. “Suit” means a civil proceeding in which monetary damages

are alleged because of a “public officials wrongful act” to which this Coverage Form applies. “Suit” includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

(Exh. “C”, pp. 38-39).

IV. CAUSES OF ACTION

COUNT I

43. Plaintiff incorporates paragraphs 1 through 42 of this Complaint by reference as if fully set forth at length herein.

44. Plaintiff provided a defense to the City of Hazleton in the Underlying Action pursuant to a Reservation of Rights issued November 9, 2006. A true and correct copy of the Reservation of Rights letter is attached hereto and marked as Exhibit “D.”

45. Subsequent to the issuance of the Reservation of Rights letter, the Underlying Plaintiffs filed a second amended complaint on January 12, 2007. The second amended complaint, unlike prior pleadings, contained no claim for

economic or monetary damages, but was limited solely to claims for declaratory and injunctive relief.

46. The July 26, 2007 decision and verdict awarded Plaintiffs declaratory and injunctive relief only.

47. The Public Officials Liability Form, at Exclusion Number 9, provides that:

We will not be obligated to make any payment nor to defend any “suit” in connection with any “claim” made against the insured:

9. **For “claim(s),” demands, or actions seeking relief or redress in any form other than monetary damages, or for any fees, costs or expenses which the insured may become obligated to pay as a result of any adverse judgment for declaratory relief or injunctive relief; however, we will afford defense to the insured for “suit(s)” in which monetary damages are requested if not otherwise excluded;**

(Exh. “C”, p. 35) (emphasis added).

48. Plaintiff has no duty of defense or indemnity to the City of Hazleton under the Policy with respect to the Underlying Action, in which the City of Hazleton has filed a notice of appeal.

49. Pursuant to the express terms of Exclusion Number 9, there is no coverage for the declaratory and injunctive relief claims at issue in the Underlying

Action or in the City of Hazleton's appeal of the judgment entered against it in same.

50. Because all claims at issue in the Underlying Action and in the City of Hazleton's appeal are excluded from coverage, Plaintiff has no duty to fund the City of Hazleton's appeal of the July 26, 2007 judgment entered in favor of the Underlying Plaintiffs.

51. The Public Officials Coverage Form further provides as follows:

2. DEFENSE AND SUPPLEMENTARY PAYMENTS

....

The insured, except at its own cost and for its own account, will not, without our written consent, make any payment, admit any liability, settle any "claim," assume any obligation, or incur any expense.

We will have the right, but no duty, to appeal any judgment.

(Exh. "C," p. 34) (emphasis added).

52. Plaintiff has no contractual duty under the Policy to appeal any judgment entered against its insured. Plaintiff has no duty to fund the City of Hazleton's appeal of the judgment entered against it in the Underlying Action.

WHEREFORE, Plaintiff, Scottsdale Insurance Company, respectfully requests that this Honorable Court enter an Order declaring the following:

Plaintiff, Scottsdale Insurance Company, owes no duty of defense or indemnity to the City of Hazleton in the Underlying action

captioned, Pedro Lozano, et al., v. City of Hazleton, filed in the United States District Court for the Eastern District of Pennsylvania and docketed to No. 3:06-CV-01586, or in the City of Hazleton's appeal of the judgment entered against it in such Underlying Action.

COUNT II

53. The averments set forth in the foregoing paragraphs 1 through 52 of this complaint are incorporated by reference herein as though set forth in full.

54. Insurance coverage was provided to the City of Hazleton under the Public Officials' Liability Coverage Form of the Policy for all "loss" resulting from "public officials wrongful acts".

55. "Loss" means any monetary amount which the insured is legally obligated to pay as a result of "public officials wrongful acts" covered by this Coverage Form and will include, but not be limited to, judgments and settlements..." (Exh. "C", p. 38).

56. However, as stated in Exclusion Number 9 of the Public Officials Liability Coverage Form:

We [Scottsdale] will not be obligated to make any payment nor to defend any "suit" in connection with any "claim" made against the insured:

9. For "claim(s)," demands, or actions seeking relief or redress in any form other than monetary damages, or **for any fees, costs or expenses which the insured may become obligated to pay as a result of any adverse judgment for declaratory relief or injunctive relief;**

however, we will afford defense to the insured for “suit(s)” in which monetary damages are requested if not otherwise excluded;

(Exh. “C”, p. 35) (emphasis added).

57. On July 26, 2007, judgment was entered in favor of the Underlying Plaintiffs and against the City of Hazleton in the Underlying Action, and only non-monetary relief was awarded in the form of a declaratory order invalidating the Ordinances in question and a permanent injunction prohibiting enforcement of the Ordinances. (See Exh. “B”).

58. Pursuant to 42 U.S.C. § 1988, the Underlying Plaintiffs sought an award of attorneys’ fees and costs incurred in prosecution of the Underlying Action.

59. By order issued August 16, 2007, the Underlying Plaintiffs were directed to file their petition for attorneys’ fees on or before August 31, 2007.

60. Pursuant to the express language of Exclusion Number 9, Plaintiff has no duty under the Policy to pay any fees, costs or expenses which the City of Hazleton may become obligated to pay as a result of the adverse judgment for declaratory relief and injunctive relief entered in the Underlying Action.

61. Plaintiff has no duty under the Policy to pay any attorneys’ fees awarded to the Underlying Plaintiffs in the Underlying Action, as the Policy

expressly excludes such fees, costs and expenses from the coverage provided for Public Officials Liability.

62. Plaintiff has no duty under the Policy to pay any court costs for which the City of Hazleton may be found responsible in the Underlying Action, as such costs are excluded from coverage under the Policy.

WHEREFORE, Plaintiff, Scottsdale Insurance Company, respectfully requests that this Honorable Court enter an Order declaring the following:

Plaintiff, Scottsdale Insurance Company, has no duty to pay any attorneys' fees, costs or expenses for which the City of Hazleton is determined to be responsible in the Underlying Action captioned, Pedro Lozano, et al., v. City of Hazleton, filed in the United States District Court for the Eastern District of Pennsylvania and docketed to No. 3:06-CV-01586, or in the City of Hazleton's appeal of the judgment entered against it in such Underlying Action.

COUNT III

63. The averments set forth in the foregoing paragraphs 1 through 62 of this complaint are incorporated by reference herein as though set forth in full.

64. As previously stated, Plaintiff assumed the City of Hazleton's defense in the Underlying Action pursuant to a reservation of rights, and assigned the law firm of Deasey, Mahoney & Bender, Ltd., to represent the City of Hazleton.

65. The City of Hazleton and/or its defense counsel, upon information and belief, retained Kris W. Kobach, Esquire, as counsel to assist in the defense of the Underlying Action.

66. Mr. Kobach entered an appearance for the City of Hazleton in the Underlying Action and remained co-counsel of record for the City throughout the litigation of the Underlying Action.

67. Upon information and belief, the City of Hazleton compensated or agreed to compensate Mr. Kobach for his services in defense of the Underlying Action.

68. Numerous additional attorneys also participated in the Underlying Action on behalf of the City of Hazleton; however, upon information and belief, these attorneys were not compensated by the City for their services.

69. Plaintiff, in its November 9, 2006 Reservation of Rights, declined to fund Mr. Kobach's services or to contribute to the funding of Mr. Kobach's services, and advised the City of Hazleton that any and all compensation to Mr. Kobach was without Plaintiff's consent. (Exh. "D", pp. 7-8).

70. The Policy's Public Officials Liability Coverage Form provides, in relevant part, as follows:

2. DEFENSE AND SUPPLEMENTARY PAYMENTS

....

The insured, except at its own cost and for its own account, will not, without our written consent, make any payment, admit any liability, settle any “claim,” assume any obligation, or incur any expense.

We will have the right, but no duty, to appeal any judgment.

(Exh. “C,” p. 34) (emphasis added).

71. Plaintiff has no duty under the Policy to pay any fees or costs incurred by the City of Hazleton with respect to legal representation or legal services provided by Attorney Kobach or any other attorney retained directly by the City of Hazleton to participate in the Underlying Action.

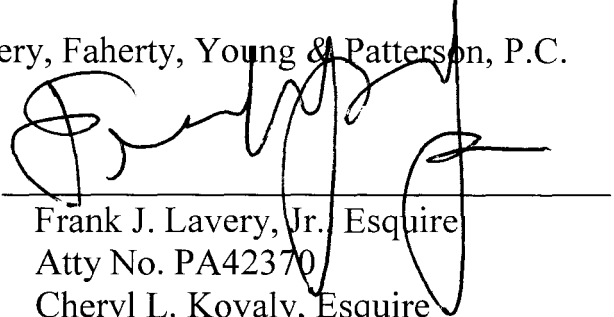
WHEREFORE, Plaintiff, Scottsdale Insurance Company, respectfully requests that this Honorable Court enter an Order declaring the following:

Plaintiff, Scottsdale Insurance Company, has no duty to pay any attorneys’ fees, costs or expenses incurred by the City of Hazleton for attorneys or consultants that it retained directly and without the prior written approval of Plaintiff for its defense of the Underlying Action captioned, Pedro Lozano, et al., v. City of Hazleton, filed in the United States District Court for the Eastern District of Pennsylvania and docketed to No. 3:06-CV-01586, or in the City of Hazleton’s appeal of the judgment entered against it in such Underlying Action.

Respectfully submitted,

Lavery, Faherty, Young & Patterson, P.C.

By:



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DATE:

9/19/07