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JEANNE HICKS, CLERK  
LISA POSADA

BY: \_\_\_\_\_

1 Mark W. Drutz, # 006772  
2 Jeffrey R. Adams, #018959  
3 Sharon Sargent-Flack, #021590  
4 **MUSGROVE, DRUTZ & KACK, P.C.**  
5 1135 Iron Springs Road  
6 Prescott, Arizona 86305  
7 (928) 445-5935

8 *Attorneys for Defendants*

9 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**

10 **IN AND FOR THE COUNTY OF YAVAPAI**

11 ✓  
12 JOHN B. CUNDIFF and BARBARA C.  
13 CUNDIFF, husband and wife; BECKY  
14 NASH, a married woman dealing with her  
15 separate property; KENNETH PAGE and  
16 KATHRYN PAGE, as Trustee of the Kenneth  
17 Page and Catherine Page Trust,

18 Plaintiffs,

19 v.

20 DONALD COX and CATHERINE COX,  
21 husband and wife,

22 Defendants.

Case No. CV 2003-0399

Division No. 1

**DEFENDANTS' MOTION FOR AWARD  
OF ATTORNEYS' FEES**

*(Oral Argument Requested)*

(Assigned to the Honorable David L. Mackey)

23 Defendants, by and through undersigned counsel, hereby submit their Motion for an Award  
24 of Attorneys' Fees in the above-captioned matter. This request for an award of attorneys' fees is  
25 supported by the following Memorandum of Points and Authorities, the attached Affidavits of  
26 Counsel and supporting documents, and the record on file herein.  
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. DEFENDANTS ARE ENTITLED TO AN AWARD THEIR REASONABLE**  
3 **ATTORNEYS' FEES INCURRED PURSUANT TO A.R.S. § 12-341.01(A).**

4 **A. Facts Which Form The Basis For Award.**

5 This case arises out of Plaintiffs' First Amended Complaint ("Complaint") in which  
6 Plaintiffs alleged that Defendants' use of their property in Coyote Springs Ranch violates  
7 Paragraph 2 of that certain Declaration of Restrictions ("Declaration"), which was recorded on  
8 June 13, 1974 in the Official Records of Yavapai County, Arizona at Book 916, Page 680 and which  
9 provides:  
10

11 No trade, business, profession or any other type of commercial or industrial activity  
12 shall be initiated or maintained within said property or any portion thereof.

13 On June 24, 2005, Defendants filed their Motion for Summary Judgment Re: Agricultural  
14 Activities pursuant to which Defendants argued that their use of their Coyote Springs Ranch property  
15 did not violate Paragraph 2 of the Declaration. On July 26, 2005, the Court heard oral argument on  
16 Defendants' Motion for Summary Judgment. In finding that no material facts were in dispute, the  
17 Court granted Defendants' Motion for Summary Judgment as to Count I of Plaintiffs' Complaint and  
18 which alleged a breach of contract and all other Counts of the Complaint that pertained to Paragraph  
19 2 of the Declaration, ruling as a matter of law that Defendants' use of their property did not violate  
20 Paragraph 2 of the Declaration.  
21

22 **B. Plaintiffs Are Entitled To An Award Of Attorneys' Fees Pursuant To A.R.S. §**  
23 **12-341.01.**

24 Defendants submit that attorneys' fees are awardable to them pursuant to the provisions of  
25 A.R.S. §12-341.01(A) since this action "arises out of contract". In bringing their lawsuit, Plaintiffs  
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1 have argued that Defendants have breached a contract – namely, the Declaration – entitling them  
2 to injunctive and declaratory relief. Restrictive covenants constitute a contract between the  
3 subdivision’s property owners as a whole and individual lot owners. See Ahwatukee Custom  
4 Estates Mgmt. Ass'n, Inc. v. Turner, 196 Ariz. 631, 634, 2 P.3d 1276, 1279 (Ct. App.2000). In their  
5 prayer for relief in their Complaint, Plaintiffs have themselves admitted that this matter arises out  
6 of a contract asserting that they are entitled to an award of attorneys’ fees pursuant to A.R.S. § 12-  
7 341.01. Based on the foregoing, Plaintiffs have conceded that this matter falls within the purview  
8 of A.R.S. § 12-341.01 entitling the prevailing party to recovery of their attorneys’ fees and costs.  
9 In this case, the Court has established that Defendants are the “prevailing parties” having ruled as  
10 a matter of law that Defendants’ use of their property does not violate Paragraph 2 of the  
11 Declaration. Therefore, Defendants are entitled to recovery of their attorneys’s fees and costs  
12 pursuant to A.R.S. § 12-341.01.  
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16 The factors to be considered by the Court in determining whether attorneys’ fees should be  
17 awarded under A.R.S. §12-341.01 are as follows:  
18

- 19 1. Whether the unsuccessful party presented a meritorious claim or defense;
- 20 2. Whether the litigation could have been avoided or settled and whether the successful  
21 party’s efforts were completely superfluous in achieving the results;
- 22 3. Whether the assessment of attorneys’ fees against the unsuccessful party would work  
23 an extreme hardship;
- 24 4. Whether the successful party prevailed with respect to all of the relief sought;
- 25 5. Whether the legal question present was novel and whether such claim or defense had  
26 been previously adjudicated in the same jurisdiction; and  
27  
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1           6.       Whether the award would discourage other parties with tenable claims or defenses  
2                   from litigating or defending legitimate contract issues for fear of incurring liability  
3                   or substantial amounts of attorneys' fees.

4       See Associated Indemnity Corp. v. Warner, 143 Ariz. 567, at 570, 694 P.2d 1181, at 1184 (1985).

5       No single factor is dispositive. Wilcox v. Waldman, 154 Ariz. 532, 744 P.2d 444 (App. 1987).

6       Applying the foregoing factors to this case results in one conclusion – namely that Defendants are  
7       entitled to recover their attorneys' fees and costs.

8                   Plaintiffs were unsuccessful with respect to the single most significant issue in this case –  
9       namely whether Defendants have violated Paragraph 2 of the Declaration. Plaintiffs have conceded  
10       the foregoing in asking the Court to vacate the trial of this case following the Court's ruling on  
11       Defendants' Motion for Summary Judgment. Plaintiffs easily could have avoided this litigation  
12       simply by agreeing to any number of the reasonable settlement proposals tendered during the two  
13       mediations and the one settlement conference in this case. However, Defendants were forced to  
14       defend against Plaintiffs' claim alleging improper use of Defendants' property and on which  
15       Defendants ultimately prevailed.

16                   Furthermore, Plaintiffs have not suffered, nor will they suffer, any harm as a result of an  
17       award of attorneys' fees as Alfie Ware, a non-party, has agreed to pay all of Plaintiffs' attorneys' fees  
18       in this case. On this point, Plaintiff John Cundiff testified as follows:

19                   Q.       Does Alfie Ware live in the portion of Coyote Springs Ranch that you  
20                   live in?

21                   A.       No.

22                   Q.       Do you have any information regarding why he would be a contact  
23                   person concerning the action you've brought against Mr. and Mrs. Cox.

24                   A.       Well, he's furnishing a majority of the funds.

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Q. What do you mean he's furnishing the majority of the funds?

A. He's paying the legal expenses.

Q. Is he paying all of the legal expenses?

A. So far.

(Deposition of John B. Cundiff taken August 29, 2004 at p. 120, lns. 7-18). Accordingly, this was a case in which Plaintiffs' attorneys' fees were being paid by an individual (Alfie Ware) who was not even a party to the litigation. As a result, Plaintiffs will suffer no hardship should this Court grant Defendants an award of attorneys' fees.

The legal issues in this case are and were not novel. Rather, they were relatively simple – namely, may Plaintiffs enforce the Declaration against Defendants and did Defendants violate the Declaration. Finally, the assessment of fees against Plaintiffs *will not* discourage other parties from litigating just claims. To the contrary, an attorneys' fees award in this case will force other Coyote Springs Ranch property owners to conduct reasonable due diligence in evaluating the wisdom of filing a lawsuit premised upon an allegation that the Declaration has been violated.

Based on the foregoing, attorneys' fees should be awarded to Defendants pursuant to A.R.S. § 12-341.01.

**C. Amount and Computation of Attorneys' Fees.**

The attorneys' fees requested in this action were computed using the method prescribed by the Arizona Court of Appeals in Schweiger v. China Doll Restaurant Inc., 138 Ariz. 183, 673 P.2d 927 (App. 1983). The amount requested is fully supported by the Affidavit of Jeffrey R. Adams Re: Attorneys' Fees attached hereto as Exhibit "1" and was calculated based upon the following facts: Mark W. Drutz, Thomas P. Kack, Grant K. McGregor and Jeffrey R. Adams each worked at the rate

1 of \$175.00 per hour; Sharon Sargent-Flack worked at the rate of \$155.00 per hour; and legal  
2 assistants and paralegals worked at \$65.00 to \$85.00 per hour. These hourly rates are less than the  
3 rates being charged by other law firms in Yavapai County, Arizona for similar legal services.  
4  
5 Defendants' former counsel, Michael A. Bourke, also billed Defendants for his attorneys' fees as  
6 shown on his Affidavit attached as Exhibit "2". The total hours worked by each of the attorneys,  
7 legal assistants and paralegals are documented on the exhibits attached to the affidavits attached  
8 hereto.  
9

10           Undersigned counsel avows that Defendants have paid for the legal services reflected in the  
11 computerized printouts of the actual monthly billings of Musgrove, Drutz & Kack, P.C., and  
12 Michael A. Bourke. Undersigned counsel further avows that they have reviewed the monthly  
13 itemizations submitted regarding this matter, and that the fees reflected therein were: (1) for  
14 reasonably necessary services rendered in the above-captioned matter; and (2) were for services and  
15 expenses agreed to be paid by and on behalf of Defendants. Undersigned counsel avows that a  
16 review of the monthly billing statements was conducted to ensure that there was no unnecessary  
17 duplication of efforts and services by Defendants' attorneys and that Defendants are requesting only  
18 amounts that directly relate to the litigation of this case.  
19  
20

21           **D. Supporting Documents.**  
22

23           Attached hereto as Exhibit "1" is the Affidavit of Attorneys' Fees of Jeffrey R. Adams.  
24 Attached to the Affidavit of Attorneys' Fees of Jeffrey R. Adams as Exhibit "1" is the itemization  
25 of monthly billings to Defendants. Attached hereto as Exhibit "2" is the Affidavit of Michael A.  
26 Bourke. Attached to his affidavit is his itemization of fees paid by Defendants related to his work  
27 in this case. The itemizations of monthly billings attached to the foregoing affidavits show the dates  
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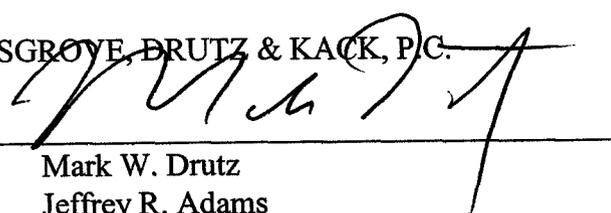
1 on which work was performed for Defendants; describe the work performed; reflect the name or  
2 names of the attorneys who performed such work; set forth the amount of time spent in performing  
3 such work and the cost of same; and reflect the applicable billing rate(s) of the attorneys and other  
4 legal professionals involved.  
5

6 **II. CONCLUSION.**

7 For the foregoing reasons, Defendants respectfully request that this Court award to them the  
8 sum of Eighty-Eight Thousand One Hundred Seven Dollars and Twenty-Five Cents (\$88,107.25)  
9 as and for their reasonable attorneys' fees in this matter.  
10

11 RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of August, 2005.

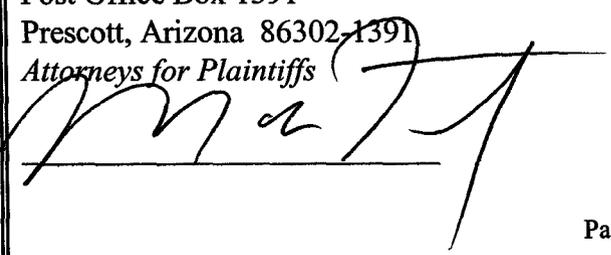
12 MUSGROVE, DRUTZ & KACK, P.C.

13 By   
14

15 Mark W. Drutz  
16 Jeffrey R. Adams  
17 Sharon Sargent-Flack  
18 *Attorneys for Defendants*

19 COPY of the foregoing hand-delivered  
20 this 15<sup>th</sup> day of August, 2005 to:

21 Honorable David L. Mackey  
22 Yavapai County Superior Court  
23 Division 1  
24 Yavapai County Courthouse  
25 Prescott, Arizona 86301

26 David K. Wilhelmsen, Esq.  
27 Marguerite M. Kirk, Esq.  
28 Favour, Moore & Wilhelmsen, P.A.  
1580 Plaza West Drive  
Post Office Box 1391  
Prescott, Arizona 86302-1391  
*Attorneys for Plaintiffs* 



1 Mark W. Drutz, #006772  
2 Jeffrey R. Adams, #018959  
3 Sharon Sargent-Flack, #021590  
4 **MUSGROVE, DRUTZ & KACK, P.C.**  
5 1135 Iron Springs Road  
6 Prescott, Arizona 86305  
7 (928) 445-5935

8 *Attorneys for Defendants*

9 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**

10 **IN AND FOR THE COUNTY OF YAVAPAI**

11 JOHN B. CUNDIFF and BARBARA C.  
12 CUNDIFF, husband and wife; BECKY  
13 NASH, a married woman dealing with her  
14 separate property; KENNETH PAGE and  
15 KATHRYN PAGE, as Trustee of the Kenneth  
16 Page and Catherine Page Trust,

17 Plaintiffs,

18 v.

19 DONALD COX and CATHERINE COX,  
20 husband and wife,

21 Defendants.

Case No. CV 2003-0399

Division No. 1

**AFFIDAVIT OF JEFFREY R. ADAMS  
RE: ATTORNEYS' FEES**

(Assigned to the Honorable David L.  
Mackey)

22 STATE OF ARIZONA     )  
23                                     ) ss.  
24 COUNTY OF YAVAPAI    )

25 Jeffrey R. Adams, having been duly sworn upon his oath, deposes and states as follows:

26 1. I am an attorney at law authorized to practice in the State of Arizona and am a  
27 member in good standing before the State Bar of Arizona.

28 2. I was admitted to the State Bar of Arizona in 1998.

1           3.     I am a shareholder of and an attorney with the law firm of Musgrove, Drutz &  
2 Kack, P.C. ("MDK"), the principal office of which is maintained in Prescott, Arizona. I am one  
3 of the attorneys who represented the Defendants in the above-captioned matter.  
4

5           4.     Since October 1998, I have practiced law on a full-time basis.

6           5.     I hold the following degrees: Bachelor of Arts (B.A.) and Masters of Accountancy  
7 (M.Acc.) degrees from Southern Utah University and Juris Doctor (J. D.) degree from Creighton  
8 University School of Law.  
9

10          6.     I am familiar with the type of litigation involved in this action and have personal  
11 knowledge of the matters set forth herein.

12          7.     My primary role in the above-entitled proceeding has been to serve Defendants in  
13 the aforesaid capacity.  
14

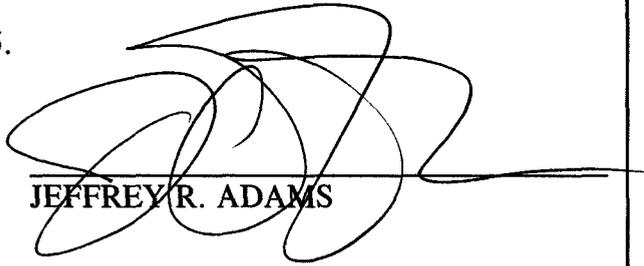
15          8.     Defendants have agreed to pay MDK's hourly rates as follows: Mark W. Drutz,  
16 Thomas P. Kack and Jeffrey R. Adams at \$175.00 per hour and Sharon Sargent-Flack at \$165.00  
17 per hour. Paralegals were billed at \$85.00 per hour and legal assistants were billed at \$65.00 per  
18 hour. I consider these billing rates to be below the hourly rate being charged by other attorneys  
19 throughout Arizona for similar services, given due consideration to the ability, training, education,  
20 experience, skill and professional standing of the attorneys involved and the intricacy and  
21 difficulty of the work performed, the time and skill required, the responsibility imposed and the  
22 result obtained.  
23

24          9.     All services performed by the attorneys and support staff of MDK in this matter  
25 were necessary at the time rendered and would have been undertaken by a reasonable and prudent  
26 attorney to advance and protect his/her client's interests in a similar proceeding. The services  
27  
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1 performed by the attorneys involved in this case were not duplicative. To ensure there was no  
2 duplication of the services provided for which fees are being requested, I conducted a thorough  
3 review of the Defendants' billing statements. After this review, the billing summaries attached  
4 to this Affidavit as Exhibit "A" were prepared.

6 10. The services performed by this firm on behalf of Defendants for which Defendants  
7 have paid or agreed to pay MDK are accurately reflected on the itemized billing summaries  
8 attached to this Affidavit as Exhibit "A". The total amount, as reflected in the itemized printouts,  
9 is Seventy-Nine Thousand Eight Hundred Twelve Dollars and Twenty-Five Cents (\$79,812.25).

11 DATED this 15 day of August, 2005.

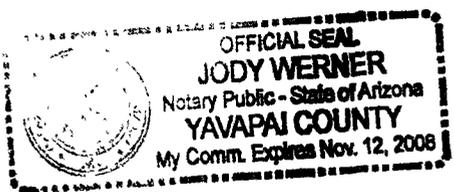
12  
13  
14   
JEFFREY R. ADAMS

15 Subscribed and sworn to before me this 15<sup>th</sup> day of August, 2005 by Jeffrey R. Adams.

16 Witness my hand and seal.

17  
18   
NOTARY PUBLIC

19 My Commission Expires:  
20 Nov. 12, 2008



MUSGROVE, DRUTZ & KACK, PC  
P.O. Box 2720  
1135 Iron Springs Road  
Prescott, AZ 86302-2720

Invoice submitted to:  
Cox, Donald & Catherine  
6750 N. Viewpoint Dr.  
Prescott Valley AZ 86314

August 10, 2005

In Reference To: JRA- Page  
File #9449-1

Professional Services

			<u>Hrs/Rate</u>	<u>Amount</u>
2/26/2004	JRA	Conference with clients; Conference with Mark Drutz; Work on Answer and Third-Party Complaint	3.00 175.00/hr	525.00
	MWD	Conference with Jeff Adams regarding facts of case and strategy	0.25 175.00/hr	43.75
3/2/2004	JRA	Telephone conference with M. Bourke	0.20 175.00/hr	35.00
	JRA	Legal research regarding action against Attorney; Work on Answer and Third-party Complaint	2.50 175.00/hr	437.50
3/3/2004	JRA	Review e-mail from M. Bourke; Telephone conference with D. Wilhelmsen	0.50 175.00/hr	87.50
3/5/2004	LJT	Letter to Opposing Counsel; Confirmation of representation	0.30 65.00/hr	19.50
3/15/2004	JRA	Legal research legal liability of Attorney/Malpractice issues; Telephone conference with expert witness	2.75 175.00/hr	481.25
3/18/2004	JRA	Review Amended Complaint; Telephone conference with D. Wilhelmsen regarding same	0.75 175.00/hr	131.25
3/19/2004	LJT	Letter to client with Amended Complaint and Acceptance of Service	0.50 65.00/hr	32.50
	LJT	Review file, organize documents and note particular information	1.00 65.00/hr	65.00
	JRA	Telephone conference with Opposing Counsel regarding non-parties at fault	0.40 175.00/hr	70.00
4/8/2004	JRA	Telephone conference with expert; Work on Answer to First Amended Complaint; Work on Third-Party Complaint	1.00 175.00/hr	175.00
4/12/2004	LJT	Letter to Opposing Counsel with Acceptance	0.10 65.00/hr	6.50
4/19/2004	JRA	Telephone conference with D. Wilhelmsen	0.30 175.00/hr	52.50

**Exhibit "A"**

			<u>Hrs/Rate</u>	<u>Amount</u>
4/26/2004	JRA	Work on Answer; Prepare client verification regarding same	0.60 175.00/hr	105.00
4/27/2004	LJT	Telephone conference with Opposing Counsel	0.20 65.00/hr	13.00
4/28/2004	JRA	Work on Notice of Nonparties at Fault	1.50 175.00/hr	262.50
4/30/2004	JRA	Work on Controverting Certificate regarding Motion to Set; Work on Demand for Jury Trial; Draft Notice of Change of Judge	1.50 175.00/hr	262.50
5/4/2004	LJT	Draft Controverting Certificate to Motion to Set and Demand for Jury Trial; Draft Notice of Change of Judge	0.60 65.00/hr	39.00
	MWD	Conference with Jeff Adams regarding filing Notice of Change of Judge	0.20 175.00/hr	35.00
5/5/2004	JRA	Work on Response to Application for Preliminary Injunction; Legal research regarding same	2.00 175.00/hr	350.00
5/6/2004	JRA	Telephone conference with D. Reynolds; Yavapai County P&Z	0.25 175.00/hr	43.75
	JRA	Legal research; Review Smith v. McRoberts file; Conference with potential witnesses; Work on Response to Application for Prelim Injunction	2.70 175.00/hr	472.50
	LJT	Telephone conference with court; Letter to Opposing Counsel	0.30 65.00/hr	19.50
5/7/2004	LJT	Revisions to Answer	1.50 65.00/hr	97.50
	MWD	Conference with Jeff Adams regarding Order to Show Cause Hearing	0.20 175.00/hr	35.00
5/11/2004	LJT	Letter to client with Minute Entry	0.20 65.00/hr	13.00
5/12/2004	LJT	Telephone conference with Opposing Counsel	0.20 65.00/hr	13.00
	JRA	Work on response to Application for Preliminary Injunction	1.00 175.00/hr	175.00
5/13/2004	JRA	Review Court materials; Work on Kincheloe affidavit	1.75 175.00/hr	306.25
	JRA	Telephone Conference with Al McRoberts	1.00 175.00/hr	175.00
5/14/2004	JRA	Telephone Conference with M. Bourke	0.20 175.00/hr	35.00
5/17/2004	JRA	Telephone conference with client; Work on client verification	0.75 175.00/hr	131.25
	JRA	Conference with Al McRoberts; Review materials from same	1.50 175.00/hr	262.50
5/18/2004	JRA	Telephone conference with J. Cox, Work on Response to Application for Preliminary	2.00 175.00/hr	350.00
	JRA	Legal research	1.50 175.00/hr	262.50
5/19/2004	JRA	Telephone conference with M. Bourke; Review client letter and newspaper article	0.40 175.00/hr	70.00
5/20/2004	JRA	Telephone call to client	0.20 65.00/hr	13.00

			<u>Hrs/Rate</u>	<u>Amount</u>
5/24/2004	LJT	Draft Notice of Depositions	0.40	70.00
			175.00/hr	
5/25/2004	LJT	Letter to client with deposition Notice	0.20	13.00
			65.00/hr	
5/26/2004	JRA	Revise Notices of Deposition	0.40	70.00
			175.00/hr	
6/1/2004	LJT	Draft Stipulation; Letter to Opposing Counsel	0.20	13.00
			65.00/hr	
	JRA	Work on Stipulation	0.60	105.00
			175.00/hr	
6/2/2004	JRA	Review fax from client; Telephone conference with Opposing Counsel	0.60	105.00
			175.00/hr	
6/9/2004	LJT	Telephone conference with Opposing Counsel	0.30	19.50
			65.00/hr	
6/15/2004	JRA	Conference with clients	2.00	350.00
			175.00/hr	
6/16/2004	LJT	Letter to client with Amended notice of Deposition; Telephone conference with Bill Jensen; Telephone conference with Kevin Eikleberry	0.40	26.00
			65.00/hr	
	JRA	Conference with clients	2.50	437.50
			175.00/hr	
6/18/2004	LJT	Work on spreadsheet of lots and owners, etc.	1.50	97.50
			65.00/hr	
	JRA	Work on Disclosure Statement	2.40	420.00
			175.00/hr	
6/19/2004	JRA	Site visit; Conference with clients	2.00	350.00
			175.00/hr	
6/21/2004	LJT	Obtain County records of Coyote Springs properties and complete spreadsheet	2.00	130.00
			65.00/hr	
	JRA	Prepare for depositions	2.50	437.50
			175.00/hr	
6/22/2004	JRA	Prepare for and attend client depositions; Conference with clients	9.00	1,575.00
			175.00/hr	
	TPK	Conference with Jeff Adams regarding settlement issues and settlement	0.30	NO CHARGE
			175.00/hr	
6/23/2004	JRA	Prepare for and attend Page depositions; Conference with clients regarding same	8.20	1,435.00
			175.00/hr	
	JRA	Telephone conference with Opposing Counsel	0.20	35.00
			175.00/hr	
	TPK	Conference with Jeff Adams regarding improper deposition antics of Opposing Counsel and later conference regarding assertion of a conflict (actual time .5)	0.25	43.75
			175.00/hr	
6/24/2004	JRA	Prepare for depositions; Attend same; Telephone conference with Opposing Counsel; Conference with clients; Draft letter to Opposing Counsel regarding conflict assertion; Review letter from Opposing Counsel regarding same	2.40	420.00
			175.00/hr	
	JRA	Review second letter from Opposing Counsel; Legal research regarding conflict of interest; Conference with Tom Kack and John Mull regarding same	1.00	175.00
			175.00/hr	

			<u>Hrs/Rate</u>	<u>Amount</u>
6/24/2004	TPK	Conference with Jeff Adams; Revise letter	0.45	78.75
			175.00/hr	
6/25/2004	TPK	Review and revise letter; Conference with Jeff Adams	0.25	43.75
			175.00/hr	
	JRA	Revise letter to D. Wilhelmsen; Review client faxes	0.40	70.00
			175.00/hr	
	JRA	Telephone conference with Palmer Investigative Services; Work on Motion to Compel Discovery	1.40	245.00
			175.00/hr	
6/30/2004	JRA	Review letter from Opposing Counsel; Telephone conference with D. Wilhelmsen	0.30	52.50
			175.00/hr	
	JRA	Review Motion to Disqualify; Conference with Mark Drutz and John Mull regarding same	1.25	218.75
			175.00/hr	
	MWD	Conference with Jeff Adams regarding M. Kirk's Motion to Disqualify	0.25	43.75
			175.00/hr	
7/1/2004	JRA	Review letter from Opposing Party; Review request for production; Review Motion to amend caption	1.30	227.50
			175.00/hr	
7/6/2004	JRA	Review client materials	0.50	87.50
			175.00/hr	
7/7/2004	JRA	Review client correspondence and Title Co. materials; Review letter from Wargos; Draft letter to client regarding same	1.75	306.25
			175.00/hr	
	JRA	Review Subpoena issued to Realty Executives	0.20	35.00
			175.00/hr	
7/13/2004	JRA	Work on response to Motion to disqualify; Work on affidavits regarding same	2.40	420.00
			175.00/hr	
7/14/2004	JRA	Revise response to Motion to disqualify	1.75	306.25
			175.00/hr	
	JRA	Conference with Mark Drutz and Tom Kack regarding Motion to disqualify	0.80	NO CHARGE
			175.00/hr	
	MWD	Revise Response and Objection to Motion to Disqualify	0.25	43.75
			175.00/hr	
	TPK	Review Motion from Jeff Adams regarding alleged conflict, Note alterations and conference with Jeff Adams	0.40	NO CHARGE
			175.00/hr	
7/19/2004	GKM	Interoffice conference with Mark Drutz regarding facts of case and requested research	0.20	NO CHARGE
			175.00/hr	
	GKM	Research and review relevant Squib notes and case law annotations in Arizona Digest under the topics of Equity and Abatement and Revival	0.75	131.25
			175.00/hr	
7/20/2004	GKM	Substantial research, analysis and review of case law in Arizona and from other jurisdictions - procured from both manual and computer research; Review and analysis of relevant CJS commentary regarding the doctrine of laches, circumstances under which it is applicable, and the effect of such issues as <i>poverty</i> or the claimed lack of " <i>financial resources</i> " as an excuse to avoid the defense; Preparation of comprehensive interoffice memorandum to Mark Drutz setting forth relevant facts, case law, CJS commentary and conclusions and oral argument to assert to Court	4.00	700.00
			175.00/hr	
	MWD	Prepare for Hearing; on Motion to Disqualify; Attendance at Hearing on Motion to Disqualify; Conference with client	3.00	525.00
			175.00/hr	
	JRA	Prepare for Oral Argument; Conference with Mark Drutz regarding same; Attendance at Oral Argument	2.50	NO CHARGE
			175.00/hr	

			<u>Hrs/Rate</u>	<u>Amount</u>
7/21/2004	JRA	Draft letter to M. Kirk; Telephone conference with same	0.60 175.00/hr	105.00
	JRA	Legal research regarding joinder of indispensable parties	1.50 175.00/hr	262.50
	JRA	Work on Discovery requests; Review letter from M. Kirk regarding depositions	0.75 175.00/hr	131.25
	LJT	Letter to client with deposition transcripts and signature pages	0.30 65.00/hr	19.50
7/22/2004	MWD	Telephone conference with Opposing Attorney D. Wilhelmsen; Conference with Jeff Adams regarding Motion to Dismiss; Review Court Order	0.50 175.00/hr	87.50
	JRA	Conference with Mark Drutz; Legal research regarding indispensable parties; Telephone conference with M. Kirk regarding depositions	1.30 175.00/hr	227.50
	JRA	Review Minute Entry	0.10 175.00/hr	17.50
	JRA	Work on Motion to Dismiss	2.40 175.00/hr	420.00
7/23/2004	JRA	Review and summarize Page Depositions	2.75 175.00/hr	481.25
7/26/2004	JRA	Review letter from M. Kirk regarding depositions; draft response to same	0.30 175.00/hr	52.50
7/27/2004	LJT	Letter to client	0.20 65.00/hr	NO CHARGE
	MWD	Revise letter to Opposing Counsel M. Kirk	0.20 175.00/hr	35.00
	JRA	Draft letter to opposing counsel; legal research regarding waiver argument	1.40 175.00/hr	245.00
7/28/2004	JRA	Telephone conference with client	0.25 175.00/hr	43.75
	JRA	Review Motion for Summary Judgment and Statement of Facts; review Motion for Site Inspection; draft letter to opposing counsel regarding extension of time to respond	1.50 175.00/hr	262.50
7/29/2004	JRA	Revise letter to M. Kirk; work on motion regarding depositions of Sanders and Ware; review deposition transcripts regarding the same	1.20 175.00/hr	210.00
7/30/2004	JRA	Review letter from Lamberson; draft response to same	0.40 175.00/hr	70.00
	JRA	Telephone conference with M. Kirk (2 calls); draft stipulation regarding the same	0.60 175.00/hr	105.00
	JRA	Review letters from property owners regarding support for clients; draft responses to same	0.40 175.00/hr	70.00
8/2/2004	LJT	Draft Stipulation; Draft Notices of Deposition (3); Letter to Opposing Counsel	0.50 65.00/hr	32.50
	JRA	Revise letters to Wargo, Bowra, Westra, Decker and Lamberson	0.80 175.00/hr	140.00
8/4/2004	LJT	Recieve, review, and respond to Client fax	0.40 65.00/hr	NO CHARGE
	JRA	Telephone conference with M Bourke	0.30 175.00/hr	52.50

			<u>Hrs/Rate</u>	<u>Amount</u>
8/4/2004	JRA	Telephone conference with W. Dittbrenner	0.75	131.25
			175.00/hr	
	JRA	Review fax from opposing counsel	0.25	43.75
			175.00/hr	
8/5/2004	LJT	Letter to First American Title Company regarding property owners names and addresses	0.20	13.00
			65.00/hr	
	JRA	Work on response to motion for site visit; prepare exhibits for same	1.25	218.75
			175.00/hr	
	JRA	Telephone conference with J. Cox regarding site meeting	0.40	70.00
			175.00/hr	
	JRA	Legal research regarding waiver regarding response to motion for summary judgment	1.60	280.00
			175.00/hr	
	JRA	Telephone conference with Decker	0.60	105.00
			175.00/hr	
8/9/2004	LJT	Telephone conference with Lonesome Valley Newsletter	0.20	13.00
			65.00/hr	
8/10/2004	LJT	Draft Request for Production	0.40	26.00
			65.00/hr	
8/11/2004	LJT	Work on CCR Violation Chart and Map	1.00	65.00
			65.00/hr	
	JRA	Telephone conference with client; review transcript of hearing	0.60	105.00
			175.00/hr	
	JRA	Revise response to motion for site visit; work on maps for inclusion with same	0.50	87.50
			175.00/hr	
8/12/2004	LJT	Telephone conference with Opposing Counsel; Draft Amended Notice of Deposition	0.30	19.50
			65.00/hr	
8/13/2004	JRA	Review Lonesome Valley Newsletters; work on motion to compel depositions regarding A. Ware and D Sanders	1.25	218.75
			175.00/hr	
	LJT	Review Lonesome Valley News	0.30	NO CHARGE
			65.00/hr	
8/16/2004	JRA	Review Reply to Response to Motion for Site Visit; draft Motion for Oral Argument; review letter from L. Kirby; draft response to same	0.75	131.25
			175.00/hr	
	LJT	Letter to client with Reply and Support letter; Letter to Kirby	0.25	16.25
			65.00/hr	
8/17/2004	LJT	Work on Rule 26.1 Disclosure	1.00	65.00
			65.00/hr	
8/19/2004	LJT	Telephone conference with Opposing Counsel; Draft 2nd amended Notice of Deposition, Letter to client	0.40	26.00
			65.00/hr	
8/20/2004	LJT	Review file; Work on Disclosure Statement; Draft Response to Request for Production	4.00	260.00
			65.00/hr	
8/23/2004	JRA	Telephone conference with K. Wargo; review letter from same; draft response to same	0.80	140.00
			175.00/hr	
8/24/2004	LJT	Letter to Opposing Counsel, Telephone conference with client; Prepare deposition exhibits	1.00	65.00
			65.00/hr	
	JRA	Work on reply to response to motion for oral argument on request for site visit	0.60	105.00
			175.00/hr	
	MWD	Revise Defendants Reply	0.20	35.00
			175.00/hr	

			<u>Hrs/Rate</u>	<u>Amount</u>
8/25/2004	JRA	Prepare for Cundiff depositions; Conference with clients regarding the same; attend the same; review correspondence from opposing counsel (2 letters)	8.00 175.00/hr	1,400.00
	LJT	Review Depositions and work on Disclosure regarding same	2.00 65.00/hr	130.00
8/26/2004	JRA	Work on disclosure statement; review letter from M. Kirk regarding joinder of other defendants; legal research regarding the same	0.50 175.00/hr	87.50
8/27/2004	JRA	Work on disclosure statement and response to request for production; Draft letter to client	0.75 175.00/hr	131.25
	JRA	Conference with Sheila Cahill, Palmer Investigations, regarding investigation of violations of Declaration of Restrictions; review report and photographs from same; draft letter to clients regarding the same	0.75 175.00/hr	131.25
	LJT	Work on Disclosure	1.00 65.00/hr	65.00
8/30/2004	JRA	Review letter from Hildebrandt; respond to same	0.20 175.00/hr	35.00
	JRA	Review response to request for production	0.30 175.00/hr	52.50
	JRA	Work on disclosure statement and response to Plaintiffs' request for production	2.75 175.00/hr	481.25
	LJT	Work on Rule 26.1 Disclosure; Letter to Charles Hildebrandt; Office visit with client; Telephone conference with Dusty from PV Growers	6.00 65.00/hr	390.00
8/31/2004	LJT	Organize file, Review Discovery Response; Finalize correspondence to client from 8-30-04		NO CHARGE
9/1/2004	JRA	Review letters from M. Kirk (2 letters); letter to client regarding the same; respond to same	0.50 175.00/hr	87.50
	JRA	Review notice regarding failure of K. Page to sign deposition	0.10 175.00/hr	17.50
	LJT	Letter to client; Review fax and Disclosure	0.50 65.00/hr	32.50
9/2/2004	JRA	Telephone conference with D. Wilhelmsen; draft letter to M. Kirk; review notice of errata	0.75 175.00/hr	131.25
9/3/2004	LJT	Draft Affidavit	0.50 65.00/hr	NO CHARGE
9/7/2004	JRA	Review Supplemental Disclosure Statement; Telephone conference with Doug Reynolds regarding the same	0.40 175.00/hr	70.00
9/8/2004	JRA	Telephone conference with J. Carver regarding status of lawsuit	0.50 175.00/hr	87.50
9/9/2004	JRA	Review fax from client	0.10 175.00/hr	17.50
9/10/2004	LJT	Letter to client, calendar	0.40 65.00/hr	NO CHARGE
	JRA	Prepare for and attend Nash deposition; Conference with clients regarding the same	3.75 175.00/hr	656.25
9/13/2004	JRA	Review fax from client	0.10 175.00/hr	17.50
	MWD	Conference with Jeff Adams	0.20 175.00/hr	35.00

			<u>Hrs/Rate</u>	<u>Amount</u>
9/15/2004	JRA	Review letter from Opposing Counsel	0.10 175.00/hr	17.50
9/16/2004	JRA	Telephone conference with client; Telephone conference with K. Wargo (record call)	0.20 175.00/hr	35.00
	JRA	Telephone conference with K. Wargo	0.20 175.00/hr	35.00
9/17/2004	LJT	Work on Supplemental Disclosure	1.00 65.00/hr	65.00
9/20/2004	LJT	Draft Motion for Protective Order	0.70 65.00/hr	45.50
	JRA	Work on Motion for Protective Order regarding tax returns	0.75 175.00/hr	131.25
	MWD	Conference with Jeff Adams regarding production of tax returns	0.20 175.00/hr	35.00
9/21/2004	JRA	Draft letter to Opposing Counsel regarding Response to Motion for Summary Judgment	0.10 175.00/hr	17.50
	JRA	Work on Response to Motion in Limine; Conference with Mark Drutz regarding the same; Conference with Mark Drutz regarding issues surrounding agricultural exemption (actual time 1.5 hrs)	0.75 175.00/hr	131.25
	LJT	Letter to client; Letter to Opposing Counsel	0.40 65.00/hr	26.00
	MWD	Conference with Jeff Adams regarding issues in the case	0.25 175.00/hr	43.75
9/22/2004	JRA	Work on Response to Motion in Limine; Legal research regarding the same	3.60 175.00/hr	630.00
	LJT	Telephone conference with Karen Wargo	0.20 65.00/hr	13.00
	LJT	Pull exhibits for Motion in Limine	0.20 65.00/hr	13.00
	MWD	Revise Response to Plaintiffs' Motion in Limine	0.70 175.00/hr	122.50
9/24/2004	LJT	Draft Request for Ruling; File	0.50 65.00/hr	32.50
	JRA	Work on Response to Motion for Summary Judgment and Statement of Facts; Legal research regarding the same	1.30 175.00/hr	227.50
9/27/2004	LJT	Letter to client; Organize file; Pull documents for Disclosure	0.70 85.00/hr	NO CHARGE
	JRA	Work on response to Motion for Summary Judgment and Statement of Facts regarding the same; Legal research regarding the same	2.75 175.00/hr	481.25
	JRA	Telephone conference with client regarding meeting in subdivision	0.30 175.00/hr	52.50
	JRA	Work on Joint Statement	0.20 175.00/hr	35.00
9/28/2004	JRA	Work on Response to Motion for Summary Judgment and Controverting Statement of Facts; Work on Affidavits of C. Cox and S. Cahill; Compile exhibits for same; Conference with Mark Drutz regarding revisions to same	6.75 175.00/hr	1,181.25
	JRA	Review letter from Opposing Counsel regarding Disclosure issues; Review Motion to Compel	0.75 175.00/hr	131.25

			<u>Hrs/Rate</u>	<u>Amount</u>
9/28/2004	MWD	Revise our Response to Plaintiffs' Motion for Summary Judgment; Conference with Jeff Adams	1.00 175.00/hr	175.00
9/29/2004	JRA	Revise Response to Motion for Summary Judgment and Controverting Statement of Facts; Revise Affidavits regarding the same; Conference with clients regarding the same	3.50 175.00/hr	612.50
	MWD	Revise pleadings in Response to Plaintiffs' Motion for Summary Judgment; Conference with Jeff Adams	0.90 175.00/hr	157.50
	LJT	Work on Exhibits for Response to Motion for Summary Judgment; Meet with client	3.00 85.00/hr	255.00
9/30/2004	LJT	Organize and update file; Letter to client; Letter to Opposing Counsel	1.00 85.00/hr	NO CHARGE
10/1/2004	JRA	Review Notice of Errata regarding Motion to Compel and Reply to Motion in Liminie	0.40 175.00/hr	70.00
10/4/2004	JRA	Work on Joint Pre-trial Statement; Telephone conference with Opposing Counsel regarding the same	0.50 175.00/hr	87.50
	MWD	Revise Joint Pretrial Comprehensive Memorandum	0.50 175.00/hr	87.50
	LJT	Letter to client	0.20 85.00/hr	17.00
	LJT	Compare and Contrast Joint Pretrial	0.30 85.00/hr	NO CHARGE
10/5/2004	JRA	Work on Supplemental Disclosure Statement; Legal research regarding the same	1.00 175.00/hr	175.00
10/6/2004	JRA	Revise Comprehensive Pretrial Statement	0.40 175.00/hr	70.00
	JRA	Review Reply to Response to Motion for Summary Judgment; Conference with Grant McGregor regarding the same	0.30 175.00/hr	52.50
	GKM	Interoffice conference with Jeff Adams regarding issue posed by Attorney Marguerite Kirk's failure to controvert, respond or object to the Separate Statement of Facts filed on behalf of our client; Grant McGregor's recommendation that Jeff Adams file a Motion for Summary Ruling pursuant to Rule 7.1 of the Ariz. R. Civ. Proc.	0.40 175.00/hr	70.00
	LJT	Telephone conference with Opposing Counsel	0.20 85.00/hr	17.00
	JRA	Work on Response to Motion to Compel; Legal research regarding the same; Conference with Mark Drutz regarding the same; Conference with client regarding the same	2.75 175.00/hr	481.25
10/7/2004	JRA	Telephone conference with K. Wargo	0.50 175.00/hr	87.50
	LJT	Telephone conference with client	0.20 85.00/hr	17.00
10/12/2004	JRA	Work on Response to Motion to Compel and Motion for Protective Order	1.75 175.00/hr	306.25
	LJT	Pull exhibits for Response to Motion to Compel	0.50 85.00/hr	42.50
10/15/2004	LJT	Telephone conference with court	0.20 85.00/hr	17.00
10/18/2004	LJT	Telephone conference with First American Title Company; Fax to Rochelle	0.30 85.00/hr	25.50

			<u>Hrs/Rate</u>	<u>Amount</u>
10/19/2004	LJT	Letter to client	0.20	17.00
			85.00/hr	
10/22/2004	JRA	Review mail from Opposing Counsel; Review listing of property owners from title company	0.25	43.75
			175.00/hr	
11/1/2004	JRA	Review reply to Motion to Compel	0.10	17.50
			175.00/hr	
11/4/2004	JRA	Review client fax	0.10	17.50
			175.00/hr	
11/5/2004	LJT	Letter to Opposing Counsel; Letter to client	0.10	8.50
			85.00/hr	
11/9/2004	JRA	Conference with clients; Travel to/from and attend site meeting	3.00	525.00
			175.00/hr	
11/10/2004	JRA	Review Interrogatories and Request for Production; Prepare same for Plaintiffs	0.40	70.00
			175.00/hr	
	LJT	Draft Request for Production of Documents & Non Uniform	0.50	42.50
			85.00/hr	
11/12/2004	JRA	Letter to Opposing Counsel	0.25	43.75
			175.00/hr	
11/24/2004	JRA	Work on Supplemental Disclosure Statement; Research regarding same	2.50	437.50
			175.00/hr	
12/3/2004	MWD	Telephone conference with Opposing Attorney D. Wilhelmsen	0.15	26.25
			175.00/hr	
12/6/2004	MWD	Telephone conference with Opposing Attorney D. Wilhelmsen	0.15	26.25
			175.00/hr	
12/7/2004	JRA	Review Stipulation regarding Motion for Summary Judgment response	0.10	17.50
			175.00/hr	
12/8/2004	JRA	Conference with Sharon Sargent-Flack regarding response to Motion for Summary Judgment and Statement of Facts	0.20	35.00
			175.00/hr	
	SSF	Conference with Jeff Adams regarding Response to Motion for Summary Judgment	0.20	NO CHARGE
			175.00/hr	
12/9/2004	JRA	Review Supplemental Disclosure Statement, Telephone conference with R. Conlin regarding the same	0.25	43.75
			175.00/hr	
12/15/2004	SSF	Conference with client and Jeff Adams regarding status of case	0.40	70.00
			175.00/hr	
	SSF	Draft Affidavit of Curtis Kincheloe; Telephone call to Mrs. Cox; Draft correspondence to Ms. Cox regarding Coyote Curt's work on Quality Bumper's Vehicles; Revise Affidavit of Mr. Kinchloe; Telephone call to Mr. Cox regarding Mr. Nash left message (actual time .7)	0.50	87.50
			175.00/hr	
	MWD	Review Court Order; Prepare Letter to client	0.30	52.50
			175.00/hr	
	JRA	Conference with client and Sharon Flack	0.75	131.25
			175.00/hr	
12/21/2004	JRA	Review letter from New Life Landscapes, Inc.; Prepare letter to client regarding the same; Prepare Supplemental Disclosure Statement regarding the same	0.25	43.75
			175.00/hr	
12/27/2004	SSF	Telephone call from client regarding Affidavit of Mr. Kincheloe and Juanita Wood's purchase and request for install of trees from nursery, Telephone conference with Jeff Adams regarding Conference with Mr. Cox	0.40	70.00
			175.00/hr	

			<u>Hrs/Rate</u>	<u>Amount</u>
12/28/2004	SSF	Review Mr. Kincheloe's revisions to Affidavit; Draft revisions to Mr. Kincheloe's Affidavit	0.30 175.00/hr	52.50
	SSF	Begin review of Plaintiffs Motion for Summary Judgment and Separate statement of Facts, consisting of 26 pages and several hundred pages of exhibits	1.50 175.00/hr	262.50
12/29/2004	SSF	Continue initial review of Plaintiffs Motion for Summary Judgment and Statement of Facts	0.20 175.00/hr	35.00
12/30/2004	SSF	Complete initial review of Motion for Summary Judgment; Sheperdize via Computer assisted legal research, Plaintiffs caselaw citations in support of their legal argument, to determine validity	0.70 175.00/hr	122.50
1/2/2005	SSF	Research cases dealing with abandonment of declarations (i.e. CC&Rs); Draft Response in Opposition to Plaintiffs' Motion for Summary Judgment - legal standards; Draft opening in opposition to Plaintiffs' Motion for Summary Judgment; Research Court's standards in accepting Affidavits in support of Motion for Summary Judgment; Draft factual allegations in response and opposition to Motion for Summary Judgment	2.10 175.00/hr	367.50
1/3/2005	SSF	Review Corpus Juris Secundum regarding Covenants (abandonment); Research caselaw cited therein regarding mandatory joinder as parties of other lot owner/non-parties; Review <u>Karner vs White Flowers</u> regarding failure to join indispensable party	0.50 175.00/hr	87.50
1/4/2005	SSF	Telephone call from Mr. Cox regarding Curtis Kincheloe's Affidavit; Discuss some of Plaintiffs' erroneous factual assertions	0.30 175.00/hr	52.50
1/5/2005	JRA	Review legal research from Sharon Flack regarding Rule 19 and failure to join indispensable party; Conference with Sharon Flack regarding the same	0.25 175.00/hr	43.75
	SSF	Draft and transmit fax to Mr. Cox regarding number of employees on property at one time	0.10 175.00/hr	17.50
	JRA	Work on resp to Motion for Summary Judgment and controverting Statement of Facts	0.75 175.00/hr	131.25
1/6/2005	SSF	Continue review and analysis of Plaintiffs' cites in their Motion; Continue drafting Response to Motion for Summary Judgment; Review Conlin's Affidavit; Begin review of portions of Plaintiffs' Depositions (actual time 7 8 hrs)	4.00 175.00/hr	700.00
1/7/2005	SSF	Telephone call to Mr. Cox regarding status of Kincheloe Affidavit, fax sent to Mr. Cox on Wednesday, and status of Alan's Motor Home, which Instruct Staff unoccupied; Review Plaintiffs' Statement of Facts and exhibits; Begin drafting Controverting Statement of Facts; Conference with Jim Cox regarding irrigation system and Mr. Kincheloe's Affidavit	4.15 175.00/hr	726.25
1/8/2005	SSF	Review Plaintiffs' depositions; Continue drafting Response to Motion for Summary Judgment regarding affirmative defenses of laches, acquiescence, unclean hands, abandonment, and waiver	5.60 175.00/hr	980.00
1/9/2005	JRA	Conference with Sharon Flack regarding response to Motion for Summary Judgment and Statement of Facts	0.25 175.00/hr	43.75
	SSF	Research "good for the goose, good for the gander," rule of ejusdem generis and equitable estoppel; Extensive review and revisions to Response to Plaintiffs' Motion for Summary Judgment; Extensive review and revisions of Controverting Statement of Facts	5.30 175.00/hr	927.50

			<u>Hrs/Rate</u>	<u>Amount</u>
1/10/2005	JRA	Review fax from client	0.10 175.00/hr	17.50
	JRA	Revise Response to Motion for Summary Judgment and Statement of Facts; Conference with Sharon Flack regarding the same	3.25 175.00/hr	568.75
	SSF	Incorporate Jeff Adams' revisions to Response to Motion for Summary Judgment and separate Statement of Facts; Review faxed copy of check drawn by Becky Nash to Coyote Curt's favoring defense of "unclean" hands; Conference with Jeff Adams regarding draft Response and Controverting Separate Statement of Facts; Additional revisions to Response to Motion for Summary Judgment	5.20 175.00/hr	910.00
1/11/2005	SSF	Extensive review and final revisions to Response to Motion for Summary Judgment and Controverting Statement of Facts; Draft additional analysis regarding issues of Equitable Estoppel and laches (actual time 4.4 hrs)	2.00 175.00/hr	350.00
	JRA	Final revisions to response to Motion for Summary Judgment and Statement of Facts and controverting Statement of Facts	1.50 175.00/hr	262.50
1/17/2005	SSF	Shepherdize case citations in our Response to Plaintiffs' Motion	0.30 175.00/hr	NO CHARGE
1/18/2005	SSF	Begin research regarding Motion to Dismiss for failure to join parties necessary to the lawsuit; Review and analyze Arizona Rules of Civil Procedure Rule 19 and Plaintiffs' Amended Complaint, Answer to Amended Complaint, and several other cases; Begin drafting Motion to Dismiss	2.60 175.00/hr	455.00
1/19/2005	SSF	Additional research regarding Collateral Estoppel and Res. Judicata; Continue drafting Motion to Dismiss; Review and revise as to style, form, and substance; Review December 2004 Lonesome Valley Newsletter and Photograph of Richie Trucking Company (actual time 3.1 hrs)	2.00 175.00/hr	350.00
1/21/2005	MWD	Telephone conference with Opposing Attorney D. Wilhelmsem; Prepare memo to Jeff Adams	0.20 175.00/hr	35.00
	SSF	Receive and review facsimile from Catherine Cox regarding Beau Boisvert	0.10 175.00/hr	17.50
	SSF	Review and revise as to style and form, Motion to Dismiss pursuant to Rule 12 (b)(7)	0.30 175.00/hr	52.50
1/24/2005	SSF	Draft Rule 26.1 Supplemental Disclosure	0.30 175.00/hr	52.50
1/25/2005	JRA	Telephone conference with J Cox	0.15 175.00/hr	26.25
1/26/2005	JRA	Review reply to response to Motion for Summary Judgment; review legal authorities set forth therein	0.75 175.00/hr	131.25
	JRA	work on motion to dismiss; legal research regarding the same	2.50 175.00/hr	437.50
1/28/2005	SSF	Receive and review Plaintiffs' Reply	0.20 175.00/hr	35.00
1/31/2005	MWD	Review our Response to Plaintiffs' Motion for Summary Judgment on issue of waiver; Conference with Jeff Adams; Attendance at Hearing Motion for Summary Judgment; Research regarding filing Supplemental Citation of Authority	2.50 175.00/hr	437.50

		<u>Hrs/Rate</u>	<u>Amount</u>
1/31/2005	MWD Prepare draft of Supplemental Citation of Authority on issue of waiver	1.00 175.00/hr	175.00
	SSF Read C.J.S. and Arizona Digests and research Plaintiffs Assertion that breach of contract seeking injunction is a remedy "at law" not on "at equity"; Read and analyze several cases and present to Jeff Adams cases clearly refuting Plaintiffs' argument	1.30 175.00/hr	227.50
	SSF Additional research regarding Rule 19 Joinder of persons necessary for just adjudication; Review Invarcovich vs. Meier and Title Insurance and Trust vs. Kelly; Revise Motion to Dismiss	0.70 175.00/hr	122.50
	JRA Prepare for oral argument regarding Plaintiffs' Motion for Summary Judgment, Motion in Limine and Motion to Compel; Conference with Mark Drutz regarding the same; Attend same; Prepare supplemental citation of authority	3.75 175.00/hr	656.25
2/1/2005	MWD Revise Supplemental Citation of Authorities on issue of waiver; Telephone conference with Opposing Attorney D. Wilhelmsen; Telephone call to J. Hancock	1.40 175.00/hr	245.00
2/2/2005	MWD Telephone conference with Opposing Attorney D. Wilhelmsen regarding signs; Prepare letter to client	0.30 175.00/hr	52.50
	JRA Conference with Mark Drutz regarding tree farm signs	0.20 175.00/hr	35.00
2/3/2005	MWD Review Court Order; Prepare letter to client	0.30 175.00/hr	52.50
2/7/2005	MWD Review Plaintiffs' Objections to Defendants' Supplemental Citation of Authority regarding Motion for Summary Judgment	0.20 175.00/hr	35.00
2/12/2005	MWD Prepare Response to Plaintiffs' Objection to our Supplemental Citation of Authorities regarding Waiver	0.75 175.00/hr	131.25
	JRA Review Plaintiffs' objection to supplemental citation of authority regarding Motion in Limine	0.20 175.00/hr	35.00
2/14/2005	MWD Review Response to Plaintiffs' Objection to Supplemental Citation of Authorities regarding Waiver; Prepare letter to client	0.30 175.00/hr	52.50
	MWD Revise Response to Plaintiffs' Objection to Supplemental Citation of Authorities regarding Lay Witness Opinion Testimony	0.20 175.00/hr	35.00
	JRA Work on Response to Objection to Supplemental Citation of Authorities regarding Motion in Limine	0.40 175.00/hr	70.00
2/15/2005	MWD Prepare letter to client	0.15 175.00/hr	26.25
2/28/2005	JRA Work on Motion to Dismiss; Conference with Tom Kack regarding the same	0.50 175.00/hr	87.50
3/1/2005	JRA Work on Motion for Leave to take depositions of additional witnesses	1.00 175.00/hr	175.00
3/11/2005	JRA Review letter from Opposing Counsel regarding K-1s	0.10 175.00/hr	17.50
3/24/2005	JRA Prepare letter to D. Wilhelmsen	0.10 175.00/hr	17.50
4/7/2005	MWD Review Court Minute Entry Order; Conference with Jeff Adams	0.20 175.00/hr	NO CHARGE
	JRA Review Minute Entry regarding rulings; Review Minute Entry regarding settlement conference; Conference with Mark Drutz	0.20 175.00/hr	35.00

		<u>Hrs/Rate</u>	<u>Amount</u>
4/12/2005	MWD Prepare letter to client	0.15	26.25
	JRA Prepare letter to client	175.00/hr 0.10	17.50
4/18/2005	JRA Review Motion to Compel; Review client tax return and K-1s; Prepare letter to Opposing Counsel regarding same	175.00/hr 0.75	131.25
4/20/2005	MWD Prepare letter to client	0.15	26.25
4/22/2005	MWD Review Plaintiffs' Motion for Reconsideration regarding Denial of Summary Judgment on Defense of Waiver; Review Burke vs Voicestream; Prepare letter to client	175.00/hr 0.50	87.50
4/25/2005	JRA Review Motion for Reconsideration	0.10	17.50
	JRA Review Subpoena Duces Tecum; Conference with Mark Drutz regarding same	175.00/hr 0.20	35.00
	MWD Conference with client Jeff Adams	0.20	NO CHARGE
4/28/2005	JRA Review Minute Entry denying Motion for Reconsideration filed by Plaintiffs	175.00/hr 0.05	8.75
	MWD Prepare letter to client	0.15	26.25
5/9/2005	JRA Review letter from D. Wihelmsen; Respond to same	175.00/hr 0.25	43.75
	JRA Telephone conference with client (2 calls) regarding Subpoena Duces Tecum; Legal research regarding the same; Prepare objection to same; Conference with Mark Drutz regarding the same	1.25	218.75
	MWD Revise Objection to Plaintiffs' Subpoena Duces Tecum; Prepare letter to client	175.00/hr 1.00	175.00
5/16/2005	JRA review fax from client regarding witnesses	0.20	35.00
5/17/2005	JRA Review fax from client	175.00/hr 0.05	8.75
5/18/2005	JRA Work on witness list	0.50	87.50
5/19/2005	JRA Telephone conference with D. Wihelmsen regarding stipulation regarding trial dates and schedule	175.00/hr 0.20	35.00
	JRA Review letter from Furbee	0.10	17.50
5/20/2005	MWD Telephone conference with Jeff Adams regarding discovery dates	175.00/hr 0.15	26.25
	JRA Work on stipulation regarding trial schedule and dates	0.50	87.50
5/23/2005	JRA Prepare Supplemental Disclosure Statement regarding letter from Furbee	175.00/hr 0.25	43.75
5/26/2005	JRA Work on settlement conference memorandum; Review deposition testimony of Plaintiffs regarding the same	175.00/hr 1.75	306.25
5/27/2005	JRA Telephone conference with W. Dittbrenner	0.20	35.00
		175.00/hr	

			<u>Hrs/Rate</u>	<u>Amount</u>
5/27/2005	JRA	Work on stipulation regarding trial dates and form of order regarding the same; Prepare letter to D. Wilhelmsen regarding the same	0.60 175.00/hr	105.00
5/30/2005	JRA	Work on Settlement Conference Memorandum; Work on list of parcels with violations of declaration	2.00 175.00/hr	350.00
6/1/2005	MWD	Telephone conference with Opposing Attorney D. Wilhelmsen; Conference with Jeff Adams	0.20 175.00/hr	35.00
6/6/2005	JRA	Telephone conference with client regarding settlement options	0.40 175.00/hr	70.00
6/8/2005	JRA	Telephone conference with J. Cox	0.50 175.00/hr	87.50
	JRA	Work on supplemental disclosure statement regarding witnesses; Work on Expert and Non-Expert Witness Lists; Work on Reply to Objection to Subpoena Duces Tecum; Legal research regarding the same; Work on Settlement Conference Memorandum	3.40 175.00/hr	595.00
	JRA	Work on settlement conference memorandum; Work on Motion to Join Indispensible Parties and Motion to Dismiss	1.60 175.00/hr	280.00
6/9/2005	MWD	Prepare letter to client	0.15 175.00/hr	26.25
6/10/2005	JRA	Work on settlement conference memorandum; Work on Reply to Objection to Subpoena Duces Tecum; Legal research regarding same	2.40 175.00/hr	420.00
6/13/2005	JRA	Review letter from client regarding settlement conference; Telephone conference with client regarding same	0.60 175.00/hr	105.00
	JRA	Work on settlement conference memorandum; Work on Reply to Objection to Subpoena Duces Tecum	3.60 175.00/hr	630.00
	MWD	Conference with Jeff Adams	0.15 175.00/hr	26.25
6/14/2005	JRA	Review of newspaper article regarding alpaca ranch in Coyote Springs	0.20 175.00/hr	35.00
	MWD	Prepare letter to client	0.15 175.00/hr	26.25
6/16/2005	SSF	Review and minor revisions to Motion to Dismiss	0.30 155.00/hr	46.50
	SSF	Research to confirm validity of Kerner vs. Flavers case, supporting necessary joinder of all covenantees	0.20 155.00/hr	31.00
	JRA	Work on Motion to Join Indispensible Parties; Conference with Mark Drutz regarding the same; Legal Research regarding the same	2.60 175.00/hr	455.00
	JRA	Work on List of Expert and Non-expert witnesses; Telephone conference with client regarding the same	1.25 175.00/hr	218.75
6/17/2005	MWD	Revise Motion to Join Indispensible Party or Motion to Dismiss	1.00 175.00/hr	175.00
6/20/2005	JRA	Conference with clients and Mark Drutz; attend settlement conference	3.00 175.00/hr	525.00
	MWD	Conference with client; Attendance at settlement conference; Further revisions to Motion to Join Indispensible Party or Motion to Dismiss	2.70 175.00/hr	472.50
	JRA	Work on supplemental disclosure statement; Work on list of parcels in violation of declaration	2.25 175.00/hr	393.75

			<u>Hrs/Rate</u>	<u>Amount</u>
6/21/2005	JRA	Work on Motion to Join Indispensible Parties; Work on Motion for Summary Judgment regarding Ambiguity in Declaration and Statement of Facts; Review letter from D. Wilhelmsen regarding Motion in Limine on waiver evidence	3.60 175.00/hr	630.00
	JRA	Work on Motion for Summary Judgment regarding Ambiguity in Declaration and Statement of Facts; Legal research regarding same	2.30 175.00/hr	402.50
	JRA	Telephone conference with client	0.10 175.00/hr	17.50
6/22/2005	MWD	Review Court Minute Entry; Prepare letter to client	0.30 175.00/hr	52.50
	JRA	Review letter from D. Wilhelmsen	0.10 175.00/hr	17.50
	JRA	Work on Motion to Join Indispensible Parties; Legal research regarding the same; Work on Motion for Summary Judgment Regarding Ambiguity; Legal Research regarding the same; Review of deposition testimony of Plaintiffs regarding the same	4.25 175.00/hr	743.75
6/23/2005	SSF	Review and abstract the Pages' depositions for Motion for Summary Judgment	1.00 155.00/hr	155.00
	TLG	Research parcel numbers on internet for Supplemental Disclosure Statement	1.20 85.00/hr	102.00
	MWD	Revise Motion for Summary Judgment and Statement of Facts on para 2 in Declaration being Ambiguous	1.50 175.00/hr	262.50
	JRA	Work on Motion to Join Indispensible Parties; Conference with Mark Drutz regarding the same; Work on Motion for Summary Judgment regarding Ambiguity and Vagueness; Legal research regarding the same; Work on Motion for Summary Judgment regarding agricultural activities; Work on Statement of Facts for Motions for Summary Judgment regarding same	3.30 175.00/hr	577.50
	JRA	Pull names and addresses for owners of parcels in violation of Declaration from County Assessors records	2.60 175.00/hr	455.00
6/24/2005	MWD	Revise Motion to Join Indispensible Party and Motion for Summary Judgment regarding Agricultural Activities	0.50 175.00/hr	87.50
	SSF	Review and abstract depositions of Katheryn Page and Becky Nash	1.90 155.00/hr	294.50
	SSF	Continue review of depositions to Supplement Motion for Summary Judgment	1.20 155.00/hr	186.00
	JRA	Work on Motion to Join; Work on Motion for Summary Judgment and Statement of Facts regarding ambiguity of declaration; Legal research regarding the same; Work on Motion for Summary Judgment and Statement of Facts regarding agricultural activities; Legal research regarding the same	8.40 175.00/hr	1,470.00
	JRA	Work on supplemental disclosure statement	1.30 175.00/hr	227.50
6/29/2005	JRA	Work on Jury Instructions	1.00 175.00/hr	175.00
	MWD	Review Plaintiffs' (2) Motions in Limine; Conference with Jeff Adams	0.40 175.00/hr	70.00
	MWD	Review Court Order; Prepare letter to client	0.30 175.00/hr	52.50

			<u>Hrs/Rate</u>	<u>Amount</u>
6/29/2005	JRA	Review Plaintiffs' Motion in Limine (2); Conference with Mark Drutz regarding same	0.30 175.00/hr	52.50
6/30/2005	JRA	Work on Witness List and 5th Supplemental Disclosure Statement	1.25 175.00/hr	218.75
	JRA	Prepare 6th Supplemental Disclosure Statement	0.30 175.00/hr	52.50
	MWD	Work on 5th Supplemental Disclosure Statement; Revise Defendants' List of Witnesses	0.40 175.00/hr	70.00
7/1/2005	JRA	Telephone conference to confer with D. Wilhelmsen pursuant to Rule 7.2 regarding Plaintiffs' Supplemental Disclosure Statement and Defendants' Motion in Limine	0.20 175.00/hr	35.00
	JRA	Work on Motion in Limine; Conference with Mark Drutz regarding same	1.75 175.00/hr	306.25
	MWD	Revise Motion in Limine; Prepare letter to client	1.00 175.00/hr	175.00
7/5/2005	MWD	Conference with Jeff Adams regarding Plaintiffs' failure to file list of witnesses	0.20 175.00/hr	35.00
7/6/2005	JRA	Conference with clients	0.75 175.00/hr	131.25
	SSF	Legal research regarding Res Judicata, Estoppel, and abandonment of CC&R's	0.90 155.00/hr	139.50
7/8/2005	MWD	(2) Telephone conference with Opposing Attorney D. Wilhelmsen; Prepare letter to Opposing Counsel D. Wilhelmsen; Review letter from Opposing Counsel D. Wilhelmsen; Prepare letter to Opposing Counsel D. Wilhelmsen	0.75 175.00/hr	131.25
7/11/2005	JRA	Deposition review regarding Agreement for Attorneys' Fees with A. Ware for use in Response to Motion in Limine	1.25 175.00/hr	218.75
	MWD	Conference with Jeff Adams regarding filing Motion to Continue	0.20 175.00/hr	35.00
	MWD	Prepare Response to Plaintiffs' Motion in Limine to Preclude Introduction of the Defense of Waiver	1.00 175.00/hr	175.00
7/12/2005	JRA	Telephone conference with B. Boisvert regarding agricultural exemptions in Coyote Springs Ranch	0.25 175.00/hr	43.75
	MWD	Review Plaintiffs' Fifth Supplemental Disclosure; Prepare letter to client	0.30 175.00/hr	52.50
7/13/2005	JRA	Prepare Motion to Continue Trial	2.25 175.00/hr	393.75
	JRA	Review minute entry regarding witness list; Conference with Mark Drutz regarding same	0.40 175.00/hr	70.00
	MWD	Revise Motion to Continue	0.70 175.00/hr	122.50
7/14/2005	JRA	Telephone conference with J. Savoini regarding testimony	0.25 175.00/hr	43.75
7/15/2005	JRA	Review aerial photos from Plaintiffs; Review Motion to Compel; Conference with Mark Drutz regarding the same; Work on amended witness list	2.80 175.00/hr	490.00
	MWD	Prepare Notice of Errata	0.20 175.00/hr	NO CHARGE

		<u>Hrs/Rate</u>	<u>Amount</u>
7/15/2005	MWD Prepare letter to client; Prepare Response to Plaintiffs' Motion in Limine regarding Alfie Ware	1.20 175.00/hr	210.00
	SSF Begin to draft Joint Pretrial Statement; Revise Joint Pretrial Statement	1.60 155.00/hr	248.00
	SSF Telephone conference with attorney Kirk regarding Joint Pretrial Statement due next week	0.20 155.00/hr	31.00
	SSF Conference with Jeff Adams regarding drafting the pretrial pleadings	0.10 155.00/hr	15.50
	SSF Begin drafting Voir Dire to Jury	1.50 155.00/hr	232.50
	SSF Conference with Jeff Adams regarding status of trial and pretrial pleadings outstanding	0.20 155.00/hr	31.00
	JRA Work on opening statement; Prepare exhibits regarding the same	2.75 175.00/hr	481.25
7/18/2005	JRA Review minute entry regarding denial of Motion to Join Indispensible Parties, Motion for Summary Judgment regarding ambiguity and vagueness and Motion to Continue; Conference with Mark Drutz regarding the same	0.25 175.00/hr	43.75
	JRA Work on Notice of Filing Amended Witness List	0.50 175.00/hr	87.50
	JRA Work on amended witness list; Work on Jury Instructions	3.75 175.00/hr	656.25
	JRA Work on opening statement	0.70 175.00/hr	122.50
	MWD Review Court Order regarding Motions; Conference with Jeff Adams; Revise Notice of Filing Amended List of Witnesses; Prepare letter to client	1.00 175.00/hr	175.00
	MWD Prepare letter to client regarding Notice of Errata	0.15 175.00/hr	NO CHARGE
	SSF Work on Jury Instructions	0.60 155.00/hr	93.00
	SSF Receive and review of Court's Minute Entry and Order regarding Motion to Join Indispensible Parties, Motion for Summary Judgment, Plaintiffs' Motion in Limine, Motion to Continue Trial	0.10 155.00/hr	15.50
7/19/2005	SSF Review and revise as to form and style, Jury Voir Dire	0.15 155.00/hr	23.25
	MWD Review letter from Opposing Counsel D. Wilhelmsen; Review Plaintiffs' Response to our Motion for Summary Judgment regarding Agricultural activities; Prepare letter to client	0.45 175.00/hr	78.75
	JRA Review objection to Witness List; Conference with Mark Drutz regarding same, Work on Jury Instructions	1.40 175.00/hr	245.00
7/20/2005	JRA Telephone conference with client regarding discussions with witnesses called by D. Wilhelmsen	0.20 175.00/hr	35.00
	JRA Telephone conference with client regarding preparation of witnesses for trial	0.20 175.00/hr	35.00
	JRA Work on Jury Instructions; Legal research regarding the same; Work on Motion for Reconsideration regarding Motion to Join Indispensible Parties; Telephone conference with opposing counsel regarding	6.75 175.00/hr	1,181.25

			<u>Hrs/Rate</u>	<u>Amount</u>
		Objection to Witness List (2 calls); Review letter from Opposing Counsel regarding the same; Respond to same; Conference with Sharon Flack regarding Joint Pretrial Statement		
7/20/2005	TPK	Conference with Jeff Adams regarding Jury Instructions	0.10 175.00/hr	17.50
	SSF	Receive and review e-mail from attorney Margurite Kirk regarding pretrial statement; Conference with Jeff Adams; Draft Response to Margurite Kirk	0.45 155.00/hr	69.75
	SSF	Continue drafting portion of Joint Pretrial Statement regarding our position and defenses; Review and revisions to Jury Instructions	0.30 155.00/hr	46.50
	SSF	Research caselaw concerning doctrine of changed circumstances	0.10 155.00/hr	15.50
	SSF	Begin drafting Joint Pretrial Statement; Receive and begin review of attorney M. Kirk's draft Pretrial Statement	6.00 155.00/hr	930.00
7/21/2005	JRA	Witness preparation; Conference with client regarding the same	2.60 175.00/hr	455.00
	JRA	Work on Response to Opposition to Witnesses and Motion in Limine; Legal research regarding the same	2.40 175.00/hr	420.00
	JRA	Work on Joint Pretrial Statement; Review letters from D. Wilhelmsen regarding the same; Respond to same; Conference with Sharon Flack regarding Joint Pretrial Statement and revisions to same	1.75 175.00/hr	306.25
	JRA	Work on Jury Instructions, Jury Voire Dire, and verdict forms; Conference with Tom Kack regarding jury instructions	2.80 175.00/hr	490.00
	TPK	Conference with Jeff Adams; Review pleadings and further discussions with Jeff Adams	0.70 175.00/hr	122.50
	TPK	Review pleadings; Conference with Jeff Adams	0.65 175.00/hr	113.75
	SSF	Review Plaintiffs' proposed Joint Pretrial Statement; Read Mrs. Cox's deposition; Revisions to Joint Pretrial Statement; Conference with Jeff Adams and Mrs Cox	7.50 155.00/hr	1,162.50
	JRA	Review letter from D. Wilhelmsen regarding Supplemental Disclosure Statement; Conference with Tom Kack regarding same; Respond to same	1.25 175.00/hr	218.75
	JRA	Telephone conference with J.Savoini regarding testimony	0.20 175.00/hr	35.00
7/22/2005	SSF	Review correspondence to and from Plaintiffs regarding tax schedules for 1998-2004 (.3); Supplement Motion in Limine (.3); Begin review and revisions to proposed Jury Instructions (.4); Extensive review and revisions to Pretrial Statement (.9); Continue review and revisions to Jury Instructions (1.0); Draft Jury Verdict Forms (1.6) (4.5); Conference with Tom Kack regarding Pretrial Statement (.3); Finalize Pretrial Statement (4)	8.10 155.00/hr	1,255.50
	SSF	Conference with Jeff Adams regarding finalizing pleadings (.2); Telephone call to attorney D. Wilhelmsen to discuss Motion in Limine pursuant to Rule 7.2 (.1); Draft correspondence to D. Wilhelmsen, pursuant to Rule 7.2, regarding intent to file Motion in Limine (.25); Review our disclosure and discovery regarding named witnesses Steven Stein, Alan Cox, and David Eiker (.6); Draft Notice of Errata	2.15 155.00/hr	333.25

		<u>Hrs/Rate</u>	<u>Amount</u>
	(.2); Review and revise Motion in Limine (.4); Review opposition to Plaintiffs' Motion in Limine (.2); Draft Notice of filing Jury Verdict Forms (.2)		
7/22/2005	SSF Receive and review Plaintiffs' filed Separate Pretrial Statement	0.40 155.00/hr	62.00
	TPK Conference with Jeff Adams and Mark Drutz regarding Jury Instructions ( .25); Review Plaintiffs' and Defendants Pretrial and notes, conference with Jeff Adams (.45); Review RAJI and review Instructions, confer with Jeff Adams (.55); Conference with Sharon Flack regarding Pretrial opening and with Jeff Adams regarding objections regarding non-disclosure, non specification and objection to the same (.6); Review additional/offered Jury Instruction regarding contract (.5); Brief conference with Sharon Flack regarding covering verdict forms and conference with Jeff Adams regarding the form for modified instructions, and citations (.4)	2.75 175.00/hr	481.25
	JRA Prepare for trial; work on Opening Statement; work on Jury Instructions; Telephone conference with Mark Drutz regarding the same; work on and revise Pretrial Statement; letter to D. Wilhelmsen regarding the same; review and revise Jury Voir Dire; witness preparation; Telephone conference with client regarding the same	9.85 175.00/hr	1,723.75
7/23/2005	JRA Prepare for trial	3.25 175.00/hr	568.75
7/24/2005	JRA Prepare for trial	4.00 175.00/hr	700.00
7/25/2005	JRA Compile and organize trial exhibits; Prepare list of exhibits; Work on Motion for Reconsideration regarding Motion for Summary Judgment regarding laches, estoppel and unclean hands; Work on Motion for Reconsideration regarding Motion to Join Indispensible Parties; Conference with Mark Drutz regarding the same; Review fax from client regarding witness preparation meeting; Letter to D. Wilhelmsen regarding trial exhibits	9.50 175.00/hr	1,662.50
	TPK Review Motion for Reconsideration; Notes for changes; Conference with Jeff Adams	0.50 175.00/hr	87.50
	MWD Revise Motion for Reconsideration; Conference with Jeff Adams regarding testimony of R. Launders	0.50 175.00/hr	87.50
	SSF Review our Motion to Join and Motion to Dismiss, previous pleadings filed with the Court, and Court's Minute Entries of April 4 and this month (.4); Conduct research regarding issues of estoppel, resjudicata (.7); Read "Kamer" and its progeny, <u>City of Flagstaff v. Babbitt; Riley vs Cochise County; Town of Gila Bend v Walled Lake Door Corp;</u> and <u>Hall v. Lalle</u> (1 7); Begin drafting Motion for Reconsideration (2.9); Review and revise Motion for Reconsideration (.6)	6.30 155.00/hr	976.50
	SSF Receive and review correspondence from D. Wilhelmsen regarding disclosure	0.10 155.00/hr	NO CHARGE
7/26/2005	JRA Telephone conference with A. McRoberts, J. Savoini and S. Cahill regarding trial preparation	1.75 175.00/hr	306.25
	JRA Prepare for and attend oral argument on Motion for Summary Judgment regarding agricultural activities, Motions in Limine, Objection to Witness List	2.75 175.00/hr	481.25

			<u>Hrs/Rate</u>	<u>Amount</u>
7/26/2005	MWD	Prepare for Hearing on Motions; Attendance at Hearing; Conference with client	2.50 175.00/hr	437.50
	SSF	Conference with Mark Drutz regarding Special Action Petition (.15); Conference with Mark Drutz and Jeff Adams regarding issues for trial ( 5)	0.65 155.00/hr	100.75
	SSF	Review draft of Complaint and make revisions as to form, style, and substance (.5); Review Rules regarding Special Action Petition (.5); Review caselaw regarding grounds for accepting jurisdiction of a Special Action Petition (.9); Begin drafting Special Action Petition (.3); Telephone call from Jeff Adams regarding prevailing on Summary Judgment regarding agricultural activities (.1)	2.30 155.00/hr	356.50
7/27/2005	SSF	Conference with Mark Drutz regarding outcome of Motion for Summary Judgment	0.10 155.00/hr	15.50
7/29/2005	JRA	Work on Motion for Award of Attorneys' Fees; Work on Partial Final Judgment	2.50 175.00/hr	437.50
	MWD	Review letter from Opposing Counsel D. Wilhelmsen; Review CC&R's; Prepare letter to Opposing Counsel D. Wilhelmsen; Prepare letter to client; Telephone call to Court Reporter D. Lundy; Conference with Jeff Adams	1.00 175.00/hr	175.00
	SSF	Draft correspondence to D. Wilhelmsen regarding dismissing Count III of First Amended Complaint	0.25 155.00/hr	38.75
8/1/2005	JRA	Review letter from D. Wilhelmsen regarding final judgment	0.05 175.00/hr	8.75
	MWD	Prepare Request to Produce; Review Court Minute Entry Order; Prepare letter to client	0.80 175.00/hr	140.00
8/2/2005	JRA	Legal research regarding rights to opposing party's attorneys' fees records; Conference with Mark Drutz regarding the same	1.20 175.00/hr	210.00
	MWD	Prepare letter to A. Ware; Review letter from Opposing Counsel D. Wilhelmsen; Prepare letter to Opposing Counsel D. Wilhelmsen	0.50 175.00/hr	87.50
	MWD	Review letter from Opposing Counsel D. Wilhelmsen; Revise Motion for Award of Attorneys' Fees; Telephone conference with attorney Dan Wilson for his opinion as to our Request for Production; Prepare letter to Opposing Counsel D. Wilhelmsen	1.00 175.00/hr	175.00
8/3/2005	MWD	Review letter from Opposing Counsel D. Wilhelmsen; Prepare letter to client	0.30 175.00/hr	52.50
8/4/2005	MWD	Prepare letter to Opposing Counsel D. Wilhelmsen	0.20 175.00/hr	35.00
8/5/2005	MWD	Review transcript of hearing on 7/26/05; Review Affidavit of Service on A. Ware; Prepare letter to client	0.50 175.00/hr	87.50
8/6/2005	MWD	Review Plaintiffs' Motion for Protective Order and to Quash Subpoena served upon A. Ware; Review Arizona Attorneys' Fees Manual	0.40 175.00/hr	70.00
8/8/2005	JRA	Work on Motion for Attorneys' Fees and Affidavits for same; Telephone conference with M. Bourke and J. Parker regarding the same	1.25 175.00/hr	218.75
8/10/2005	JRA	Work on Statement of Costs; Review of cost statements regarding the same	1.00 175.00/hr	175.00
	SSF	Conference with Mark Drutz regarding Plaintiffs' Motion for Protective Order regarding attorney time sheets	0.10 155.00/hr	15.50

		<u>Hrs/Rate</u>	<u>Amount</u>
8/12/2005	SSF	1.10	170.50
		155.00/hr	
		<hr/>	<hr/>
	For professional services rendered	494.00	\$79,812.25



1 Mark W. Drutz, #006772  
2 Jeffrey R. Adams, #018959  
3 Sharon Sargent-Flack, #021590  
4 **MUSGROVE, DRUTZ & KACK, P.C.**  
5 1135 Iron Springs Road  
6 Prescott, Arizona 86305  
7 (928) 445-5935

8 *Attorneys for Defendants*

9 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**  
10 **IN AND FOR THE COUNTY OF YAVAPAI**

11 JOHN B. CUNDIFF and BARBARA C.  
12 CUNDIFF, husband and wife; BECKY  
13 NASH, a married woman dealing with her  
14 separate property; KENNETH PAGE and  
15 KATHRYN PAGE, as Trustee of the Kenneth  
16 Page and Catherine Page Trust,

17 Plaintiffs,

18 v.

19 DONALD COX and CATHERINE COX,  
20 husband and wife,

21 Defendants.

Case No. CV 2003-0399

Division No. 1

**AFFIDAVIT OF MICHAEL A. BOURKE**  
**RE: ATTORNEYS' FEES**

(Assigned to the Honorable David L.  
Mackey)

22 STATE OF ARIZONA )  
23 ) ss.  
24 COUNTY OF YAVAPAI )

25 Michael A. Bourke, having been duly sworn upon his oath, deposes and states as follows:

- 26 1. I am an attorney at law authorized to practice in the State of Arizona and am a  
27 member in good standing before the State Bar of Arizona.  
28 2. I was admitted to the State Bar of Arizona in 1994.

1           3.       I am the owner of The Law Offices of Michael A. Bourke the principal office of  
2 which is maintained in Prescott, Arizona. I am one of the attorneys who represented the Defendants  
3 in the above-captioned matter.  
4

5           4.       Since 1985, I have practiced law on a full-time basis (I was admitted to the California  
6 Bar in 1985).

7           5.       I hold the following degrees: Bachelor of Arts from the University of California; Juris  
8 Doctor Southwestern University School of Law.  
9

10          6.       I am familiar with the type of litigation involved in this action and have personal  
11 knowledge of the matters set forth herein.

12          7.       My primary role in the above-entitled proceeding was to serve Defendants in the  
13 aforesaid capacity until I turned the matter over to the law firm of Musgrove, Drutz & Kack, P.C.  
14

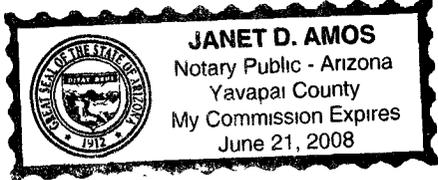
15          8.       Defendants agreed to pay my hourly rate of \$150.00 per hour. I consider this billing  
16 rate to be below the hourly rate being charged by other attorneys throughout Arizona for similar  
17 services, given due consideration to the ability, training, education, experience, skill and professional  
18 standing of the attorneys involved and the intricacy and difficulty of the work performed, the time  
19 and skill required, the responsibility imposed and the result obtained.  
20

21          9.       All services performed by me in this matter were necessary at the time rendered and  
22 would have been undertaken by a reasonable and prudent attorney to advance and protect his/her  
23 client's interests in a similar proceeding. The services performed by me were not duplicative. I  
24 conducted a thorough review of the Defendants' billing statements prior to preparation of this  
25 Affidavit. After this review, the billing summaries attached to this Affidavit as Exhibit "A" were  
26 prepared.  
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10. The services performed by me on behalf of Defendants for which Defendants have paid are accurately reflected on the itemized billing summaries attached to this Affidavit as Exhibit "A". The total amount, as reflected in the itemized printouts, is Eight Thousand Two Hundred Ninety-Five Dollars (\$8,295.00).

DATED this 9<sup>th</sup> day of August, 2005.



  
MICHAEL A. BOURKE

Subscribed and sworn to before me this 9<sup>th</sup> day of August, 2005 by Michael A. Bourke.

Witness my hand and seal.

  
NOTARY PUBLIC

My Commission Expires:  
6/21/2008

COX PROPERTY DISPUTE BILLING

5-24-03	Meeting with clients and drive by of neighborhood	2.7
5-27-03	Review of Court file in prior case	1.1
5-28-03	telephone call to Katherine	0.3
5-29-03	telephone call from Jim, letter to Realtor	1
5-31-03	tel call to Jim, computer search for info re owners	0.7
6-2-03	meeting with clients, visit to County map dept.	2.4
6-3-03	legal research re cc&rs, telephone call to Catherine	1.3
6-4-03	telephone call and fax from clients	0.4
6-5-03	telephone calls from clients and telecon to D. Jones	0.7
6-7-03	telephone call from Catherine	0.3
6-11-03	telephone calls re expert and percipient witnesses	1
6-14-03	telephone calls from Catherine and Jim re status; legal research	1.9
6-16-03	telephone calls from Catherine, telephone call to R. Launders	1.2
6-17-03	receipt and review of list of neighbor businesses	0.4
6-19-03	telephone call from clients and to R. Launders	1.1
6-20-03	tel call from Catherine, research and drafting of letter to Launders	2.1
6-24-03	receipt and review of letter from Launders	0.3
6-26-03	research re ethics and malpractice issues, draft letter to Launders	1.1
7-2-03	receipt and review of letter and motion from Launders	0.5
7-3-03	telephone calls to Launders and client; Prep of letter to plaintiffs	1.2
7-6-03	receipt and review of letter from Wilhelmson	0.2
7-7-03	telephone calls from client and Marcia at Favour	0.2
7-14-03	receipt and review of letter from D. Wilhelmson, tel. call to Wilhelmson	0.4
7-15-03	telephone call from client and message from adjuster for Realty Exec.	0.2
7-17-03	telephone calls to Wilhelmson and client	0.3
7-18-03	telephone message from Wilhelmson's secretary	0.1
7-21-03	telephone call to clients	0.2
7-31-03	telephone calls to and from Wilhelmson and call from client	0.7
8-1-03	telephone call from client	0.4
8-4-03	telephone call to Wilhelmson, telephone message from Rochelle	0.1
8-5-03	telephone call from Wilhelmson; telephone message to client	0.4
8-7-03	telephone call from client	0.4
8-11-03	telephone calls from client; tele. call to Wilhelmson	0.7
8-12-03	telephone calls to Wilhelmson and Hancock; receipt of notice of appeal	0.5
8-15-03	telephone call from Jim Hancock	0.2
8-18-03	telephone call to client; receipt of letter from Hancock	0.2
8-19-03	telephone call from Catherine and call to Wilhelmson re scheduling	0.3
8-20-03	telephone call from Catherine and call to Wilhelmson re scheduling	0.2
8-21-03	return call to Cindy at Wilhelmson's office	0.2
8-25-03	receipt of plaintiff's motion re osc; tel call to Marion at Court	0.3
8-26-03	draft of letter and list for plaintiffs, with letter to client	1.2
9-1-03	telephone calls to and from clients	0.6
9-2-03	preparation of letter to Wilhelmson	0.1
9-4-03	telephone call from client	0.3
9-5-03	investigation re prior Superior Court Case	2.2
9-7-03	telephone call from Catherine	0.2
9-8-03	telephone call from Jim	0.4
9-9-03	preparation for and attendance at Mediation	3.1
	TOTAL HOURS	36

36 HOURS @ \$150/hr. =

\$5,400.00

EXHIBIT " A "

EXPENSES:

Telephone, Fax and Photocopy  
Estimated Mediator Fee  
Total Expenses

\$11.30  
\$200.00  
\$211.30

Total Legal Fees and Expenses:  
Less retainer paid  
Total Legal expenses due:

\$5,611.30  
(\$2,500.00)  
\$3,111.30

OK # 2811  
9/15/03

COX PROPERTY DISPUTE BILLING

9-10-03	Preparation of letter to clients	0.1
9-15-03	Receipt of letter from Lancer Claims	0.2
9-17-03	telephone call from Jim Cox	0.1
9-18-03	telephone call to Jim Cox; telephone call from Catherine Cox	0.3
9-19-03	telephone call and fax from client; payment to Hancock	0.3
9-22-03	telephone call from Jim Cox	0.2
10-7-03	telephone call to Wilhelmsen	0.2
10-17-03	Receipt and review of photos from Wilhelmsen	0.1
12-8-03	telephone call from Alan Cox	0.2
12-22-03	Receipt and Review of note and article from client	0.1
1-9-04	telephone calls from Brenda at Wilhelmsen and call to clients	0.3
1-12-04	telephone calls to Brenda, Jim Cox and Keith Cox	0.8
1-14-04	telephone call to Dave Wilhelmsen	0.2
1-20-04	receipt of letter from Wilhelmsen; Preparation of letter to clients	0.2
2-9-04	telephone call to client	0.1
2-10-04	Attendance at mediation and short meeting with clients	4
2-11-04	telephone calls to J. Coughlin	0.3
2-12-02	telephone call to M. Murphy, client and Robert Taylor	0.4
2-13-04	telephone call to client and the other Robert Taylor	<u>0.1</u>
	TOTAL	8.2

8.2 HOURS @ \$150/HOUR \$1,230.00

EXPENSES:

Telephone, Fax and Photocopy	\$2.60
Actual Mediator Fee	<u>\$300.00</u>
Total Expenses	\$302.60

Total Legal Fees and Expenses: \$1,532.60

ck # 14280 \$ 1232.60

ck # 14281 \$ 300.00

2/28/04

COX PROPERTY DISPUTE BILLING -- FINAL

02-16-04	Telephone call from Robert Taylor (Turtleback and Coyote Springs)	0.4
2-17-04	Telephone call from Catherine	0.2
2-18-04	Telephone calls to Jeff Coughlin and Mike Murphy	0.3
2-18-04	Telephone call to Jeff Adams and clients	0.4
2-20-04	Telephone call from Catherine re meeting	0.2
2-26-04	Meeting with clients and Mr. Adams	2.3
2-28-04	Telephone call from client re meeting with neighbors	0.1
3-2-04	Meet with clients, Pastor and Curtis, dictate memo to J. Adams	3.1
3-5-04	Telephone call from Curtis	0.3
3-10-04	Telephone call to J. Adams	0.1
4-15-04	Telephone call to Jim Cox	0.2
4-22-04	Telephone call and Fax from clients; Tele call to Jeff Adams	0.6
4-24-04	tele call from Catherine	0.3
5-4-04	Receipt and review of new pleading	0.4
5-7-04	Telecon and Fax to Jeff Adams; Telecon to Catherine	0.4
5-12-04	Telecon from Catherine re James v Lancaster	0.2
5-13-04	Search for Court file; Telecon to Jim Cox	1
5-17-04	Telephone call from Jeff Adams; Telecon to Catherine	0.1
5-19-04	Telephone calls to Jeff and Catherine	0.3
8-4-04	Telephone call to Jeff Adams	<u>0.2</u>

TOTAL HOURS 11.1

11.1 HOURS @ \$150/HOUR \$1,665.00

EXPENSES:

Telephone, Fax and Photocopy	<u>\$1.77</u>
Total Expenses	\$1.77

Total Legal Fees and Expenses: \$1,666.77

*ck # 1461  
2/12/05*