



**Date:** February 23, 2021  
**To:** Self-Insurance Trust Fund Board  
**From:** Jim Smith, City Attorney  
Jason Reed, Deputy City Attorney  
Lisa Lorts, Risk Management Claims Analyst  
**Subject:** The City of Mesa's Property and Public Liability Trust Fund

**I. Purpose.**

This report addresses the financial status of and a budget recommendation for the City's Property and Public Liability Trust Fund (the "PPL Trust Fund").

**II. PPL Trust Fund Finances.**

In accordance with state law, the PPL Trust Fund covers the following costs and expenses:

1. Costs associated with staffing the litigation unit in the City Attorney's Office;
2. Payouts and defense costs of third-party claims and lawsuits filed against the City and its employees; and
3. The City's insurance premiums.

The PPL Trust Fund maintains a minimum \$10 million balance through quarterly transfers from various City funds. Payouts from the PPL Trust Fund vary considerably based on the timing of verdicts or settlements in high exposure cases.

In FY 19/20, the PPL Trust Fund incurred \$7.0 million in costs: \$4.3 million for claims and lawsuits; \$1.6 million for insurance; and \$1.1 million for the staffing costs of the litigation unit. For FY 20/21, the City estimates that it may have between \$7.5 and 8.0 million in costs: \$4.0 to \$4.5 million estimated for claims and lawsuits; \$2.1 million for insurance; and \$1.4 million for the staffing costs of the litigation unit.

### **III. Litigation Expenses.**

#### **A. The City's Litigation Unit.**

The City's litigation unit defends the City and its employees in nearly all third-party liability claims and lawsuits. In contrast, many cities hire outside counsel to handle their claims and lawsuits. By handling most of the City's litigation matters internally, the City recognizes significant cost savings for the PPL Trust Fund.

For example, in FY 19/20, the staffing cost for the litigation unit was \$1.1 million. During that fiscal year, the litigation unit managed approximately 260 claims and 45 lawsuits. During that same year, the City retained outside counsel to defend the lawsuits associated with 10 different incidents. The cost of outside counsel for those incidents was approximately \$1.3 million.

Moreover, by handling litigation matters internally, the City's litigation unit has developed a strong working knowledge of City's operations and has reinforced strong working relationships with City employees. This also helps the City recognize significant cost savings for the PPL Trust Fund.

For example, when the City hires outside counsel, it takes time and resources for outside counsel to come up to speed regarding the City's operations and defenses. In contrast, the litigation unit's knowledge and experience with the City's operations readily transfer to newly-filed cases without the cost that outside counsel may incur at the beginning of a case.

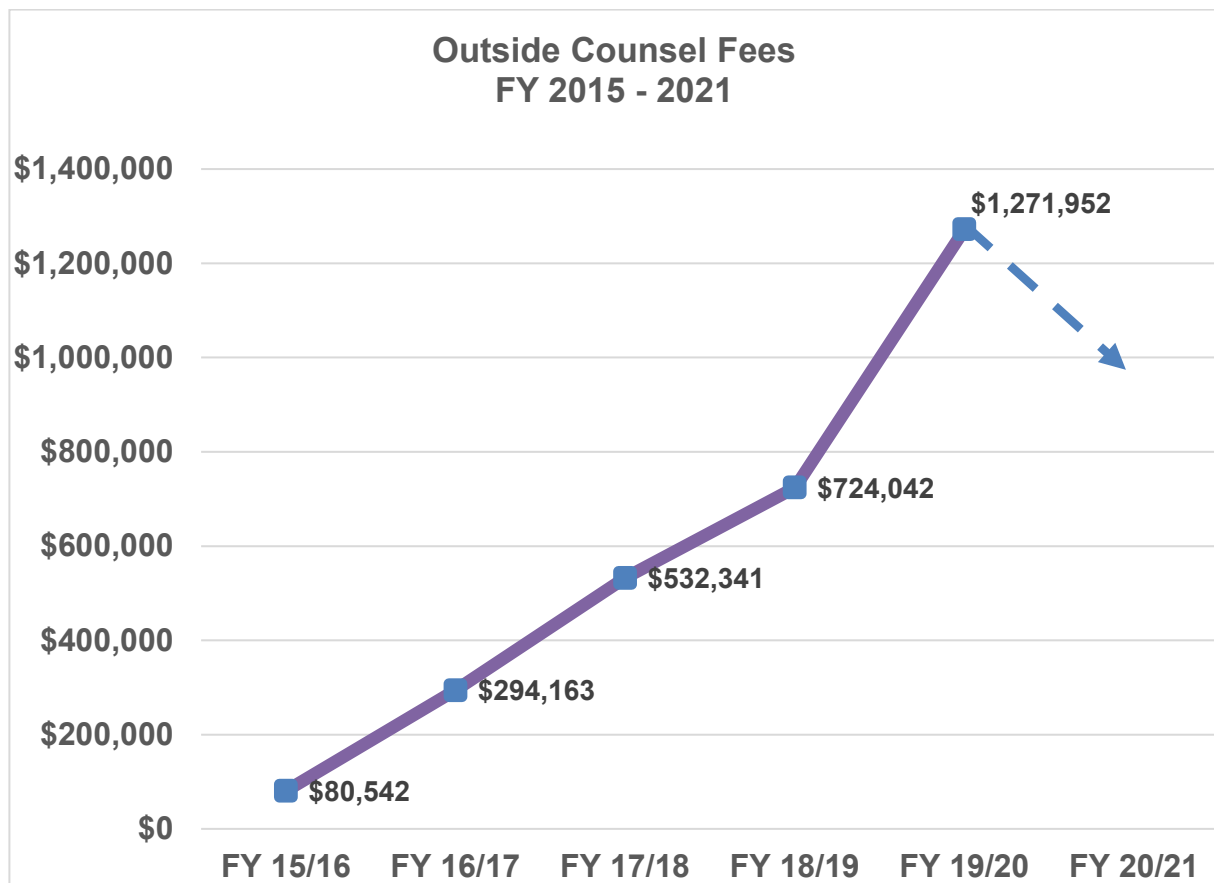
The City Attorney's Office also works with City departments to help reduce the City's financial exposure and explore areas of improvement. This collaborative effort typically results in identifying areas of risk, identifying better practices, and increasing liability sensitivity.

In the past year, the litigation unit has achieved some significant successes. For example, the City settled a significant claim from over 140 plaintiffs regarding a historic flooding event. We also obtained summary judgment in a number of cases, including multiple cases against the City's Police Officers. In total, the litigation unit settled and resolved approximately 240 claims and lawsuits in 2020.

## B. Outside Counsel.

The City generally retains outside counsel when a conflict of interest prevents the City's litigation unit from defending the lawsuit, when a particular expertise is needed, and/or for certain high-exposure claims that may erode the City's SIR.

Outside counsel costs have increased due to the activity in some of the City's high-exposure cases. In one case, outside counsel had to attend multiple depositions, engage in extensive summary judgment briefing, resolve discovery disputes, and prepare an appeal. Because high-exposure cases can last for several years, the City can continue to incur costs for outside counsel until these matters are resolved. The following chart shows the amounts spent on outside counsel for the last five years.

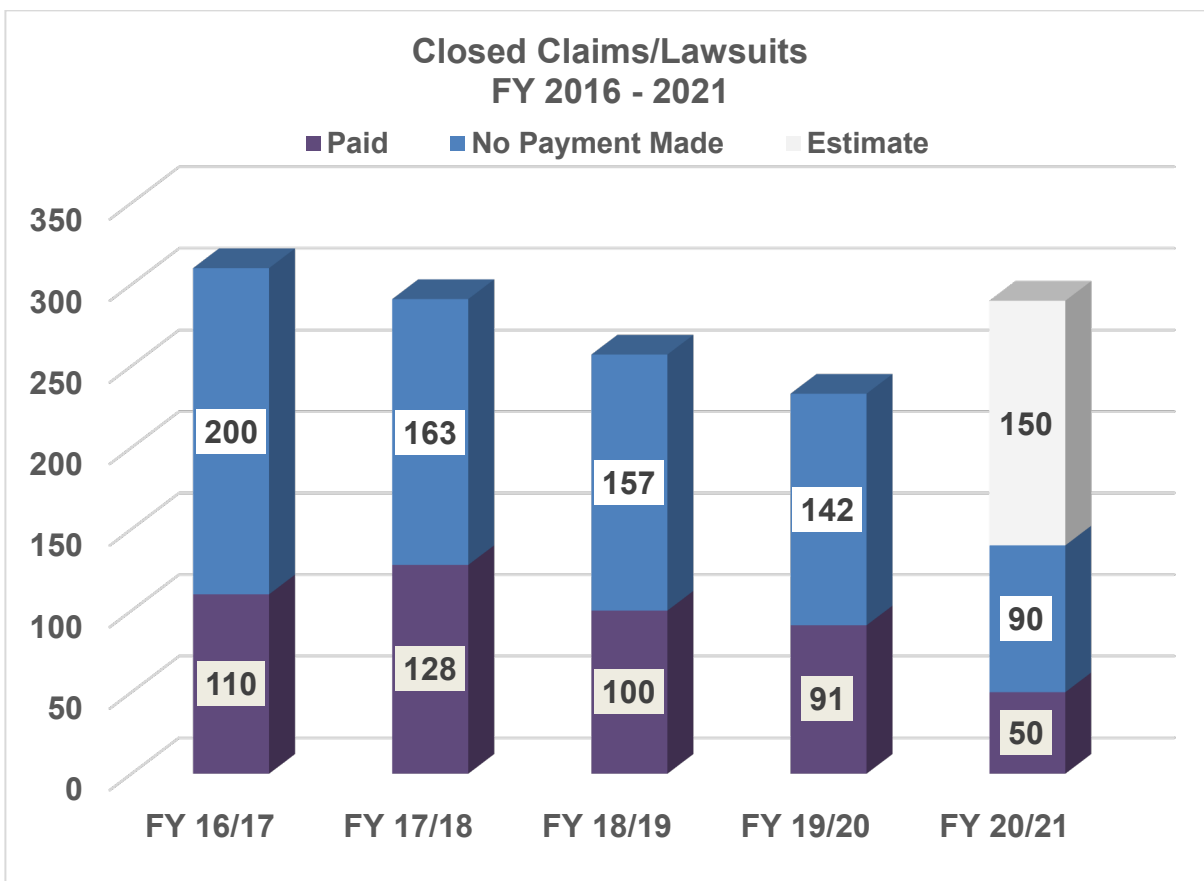


To help limit outside counsel expenses, the City works with outside counsel to explore options to more efficiently manage those cases. Some of those strategies include retaining specialized outside counsel, exploring areas for dispositive motions, using offers of judgment to limit plaintiffs' ability to shift their attorney fees to the City, and

exploring reasonable settlement proposals. Once the matters are resolved, outside counsel costs for that specific case will terminate.

#### IV. Claims And Lawsuits.

The City receives around 300 claims and 30 lawsuits each year. The City is able to resolve a majority of these claims and lawsuits without making a payment to the claimant.



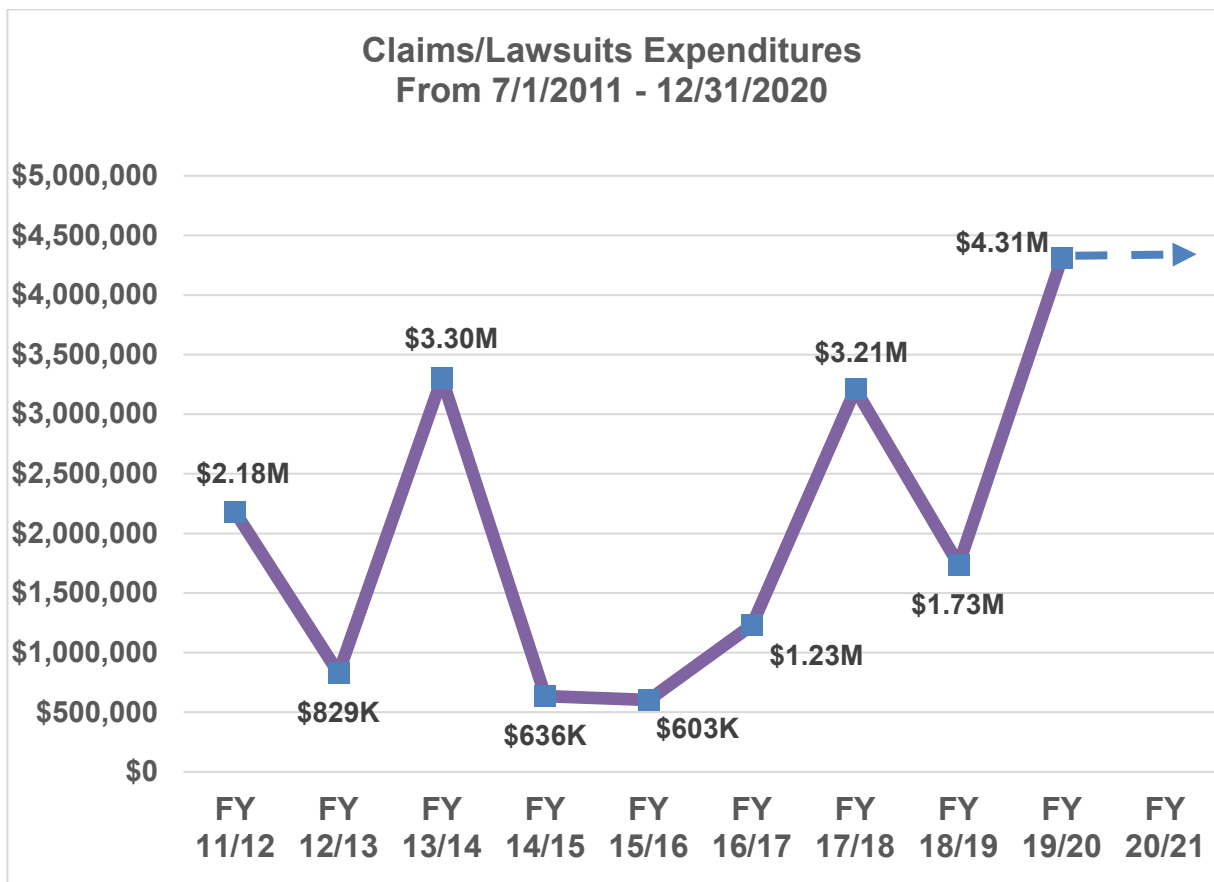
Due to a number of factors, the City anticipates that the number of claims and lawsuits filed against the City will increase. First, municipalities like the City of Mesa continue to be targets for claims and litigation due to, among other things, the services they provide, including utilities, recreational resources, and law enforcement activities.

Second, the City continues to grow and expand its services. The City correspondingly incurs additional exposure with this growth.

In addition to the increasing number of claims, the City anticipates that the costs associated with handling claims and litigation will increase because litigation costs continue to increase and juries are awarding higher damage awards.

For example, the City likely will incur greater costs to defend high-exposure cases as a result of the potential for larger damage awards, increased outside counsel fees, expert witness fees, increased technology costs, attorney fee shifting provisions, and other litigation expenses. Based on these types of trends, the City’s litigation costs and annual payouts to resolve claims likely will increase.

The following chart shows the annual claim-related payouts from the PPL Trust Fund. The variation in the annual payout depends primarily on whether high-exposure cases were resolved during a particular fiscal year.



The City is currently defending multiple high-exposure lawsuits. Pressure may be placed on the PPL Trust Fund if a jury awarded significant damages in one or more of the City’s high-exposure cases.

## **V. Insurance.**

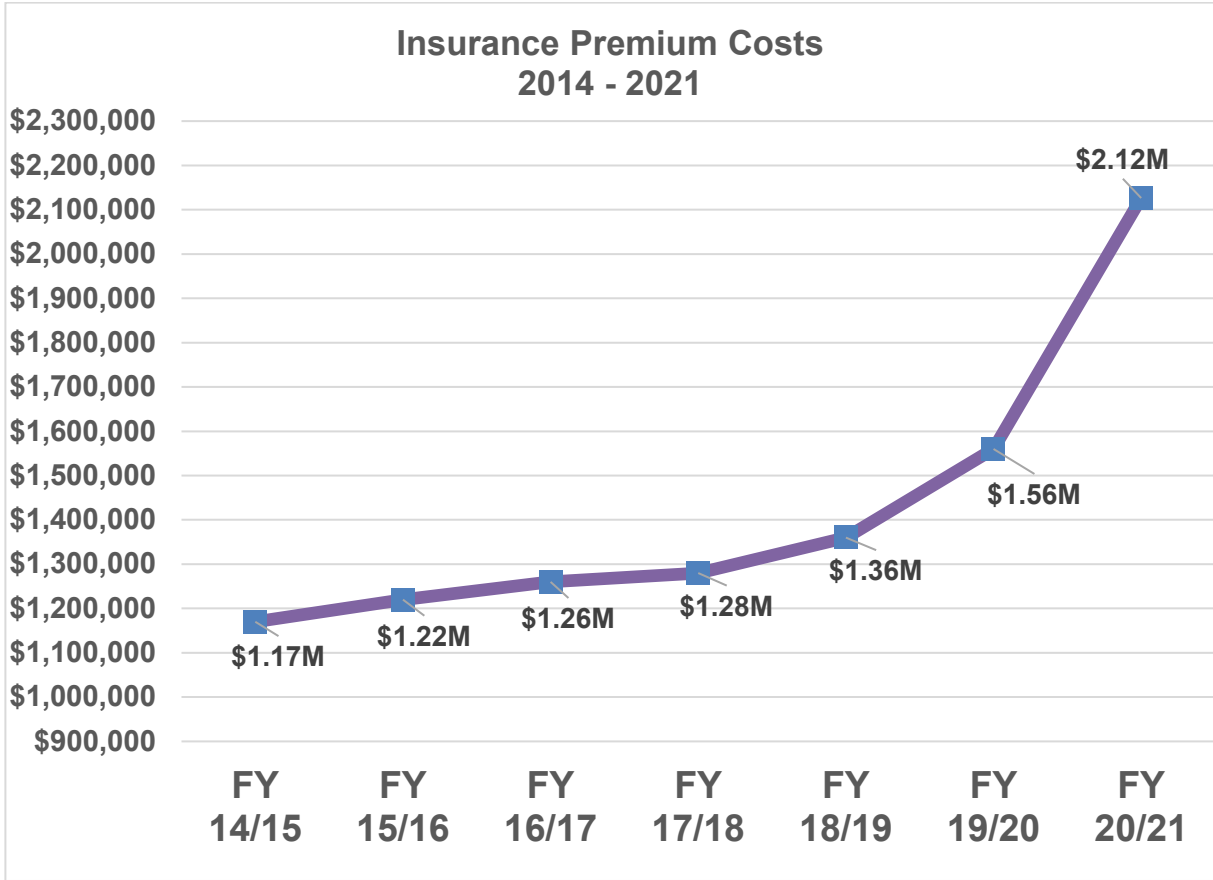
Fewer insurance companies are offering insurance to municipalities like the City. For those companies that continue to offer municipality insurance, those companies are raising insurance premiums in response to increased litigation costs and poor market returns.

In the past three years, when the City requested insurance quotes, many insurance companies indicated either that they had abandoned the municipality insurance market and/or that they would not submit a quote. Those companies have stated that, due to increasing costs (increasing number of claims and increasing litigation costs), fewer and fewer insurance companies have the resources to provide insurance for large municipalities. With fewer insurance companies providing municipality insurance, it is more difficult and more expensive for municipalities to obtain insurance.

In addition to those issues, insurance companies are not achieving the same investment-income returns that they did in the past. Because of poor market returns, insurance companies have raised premiums to maintain profitability, revenue, and insurance reserves. These pressures make it difficult for municipalities to minimize premium increases.

This past year, for example, the City's property insurance premium increased by approximately 25 percent. This significant increase was attributable, at least in part, to national natural disasters, including wildfires on the West Coast and hurricanes on the East Coast. Due to that property loss in those situations, property insurance for all municipalities (including the City) increased significantly.

The following chart shows the annual cost of the City's insurance. Based on current market conditions, the City anticipates that insurance premiums will continue to increase.



For its part, the City works to minimize future premium increases. For example, the City has worked to establish a stronger relationship with its current insurer. As part of that relationship, the City and its insurer meet at different points during the year to identify significant cases, litigation trends, and any training that the insurer could provide to the City.

By establishing a stronger relationship with its insurer, the City can help the insurer recognize the steps the City has adopted to reduce exposure, which in turn, is more likely to lead to lower premium increases.

Finally, and as discussed above, the City Attorneys' Office works with City Departments to identify areas of risk, to identify national and local trends related to new claims and lawsuits, and to offer and implement additional training to reduce future claims and lawsuits. These proactive steps to reduce the City's exposure are also more likely to lead to lower premium increases.

## **VI. The City's Self-Insured Retention.**

The City is currently self-insured for \$3 million per covered event. The amounts paid by the City towards items like litigation costs, outside counsel fees, and expert witness fees erode the SIR.

For claims that exceed the City's SIR, the City has purchased \$50 million in excess liability insurance coverage. Once the City's SIR is completely eroded, insurance is intended to cover the remaining expenses, costs, and any damage award, up to the \$50 million maximum, associated with defending and resolving the underlying claim or lawsuit.

In the future, insurers may pressure the City to raise its SIR in order to reduce the insurers' exposure.

## **VII. Summary And Recommendation.**

The City has had a successful year in managing the claims and lawsuits filed against the City and its employees. The City also came in under budget as to claim related expenses. As a result, the City can carry that savings into the next fiscal year and allow for a smaller contribution from the City to the PPL Trust Fund.

That said, pressure continues to exist on the PPL Trust Fund based on, among other things, high-exposure claims and the rising cost of litigation and insurance. To ensure that the PPL Trust Fund maintains the ability cover the costs and expenses necessary to protect the City, the City recommends a City contribution of \$6.4 million for FY 20/21 so that the PPL Trust Fund will have an ending balance of \$12.0 million.

Based on the trends discussed above, the City anticipates that contributions will need to be increased in future years. The City will continue to evaluate the PPL Trust Fund's funding level and make recommendations as to the amount of future contributions.