



Self-Insurance Trust Fund

Board Report

Date: March 25, 2019
To: Self-Insurance Trust Fund Board
From: Jim Smith, City Attorney
Jason Reed, Deputy City Attorney
Lisa Lorts, Risk Management Claims Analyst
Subject: The Property and Public Liability Trust Fund

I. Purpose.

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

II. PPL Trust Fund Finances.

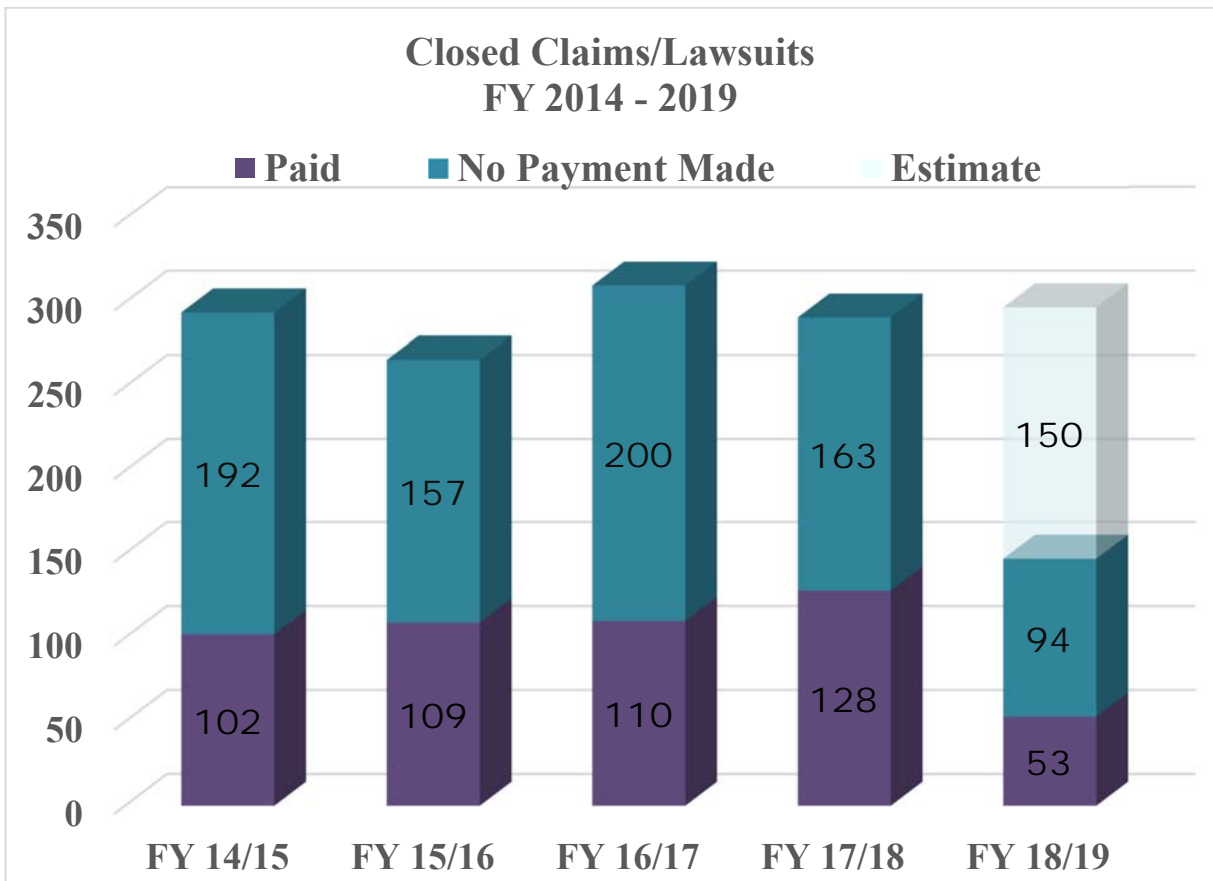
In accordance with A.R.S. § 11-981(A)(2), the City of Mesa established the PPL Trust Fund to cover the following costs:

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

Per the City Council's direction, the PPL Trust Fund maintains a \$10 million balance through quarterly transfers from various City funds, including the City's general fund. Payouts from the PPL Trust Fund vary considerably based on the timing of verdicts or payouts in high-exposure cases. In FY 17/18, the PPL Trust Fund incurred approximately \$5.6 million in costs: \$3.2 million for claims and lawsuits; \$1.3 million for insurance; and \$1.1 million for the staffing costs of the litigation unit.

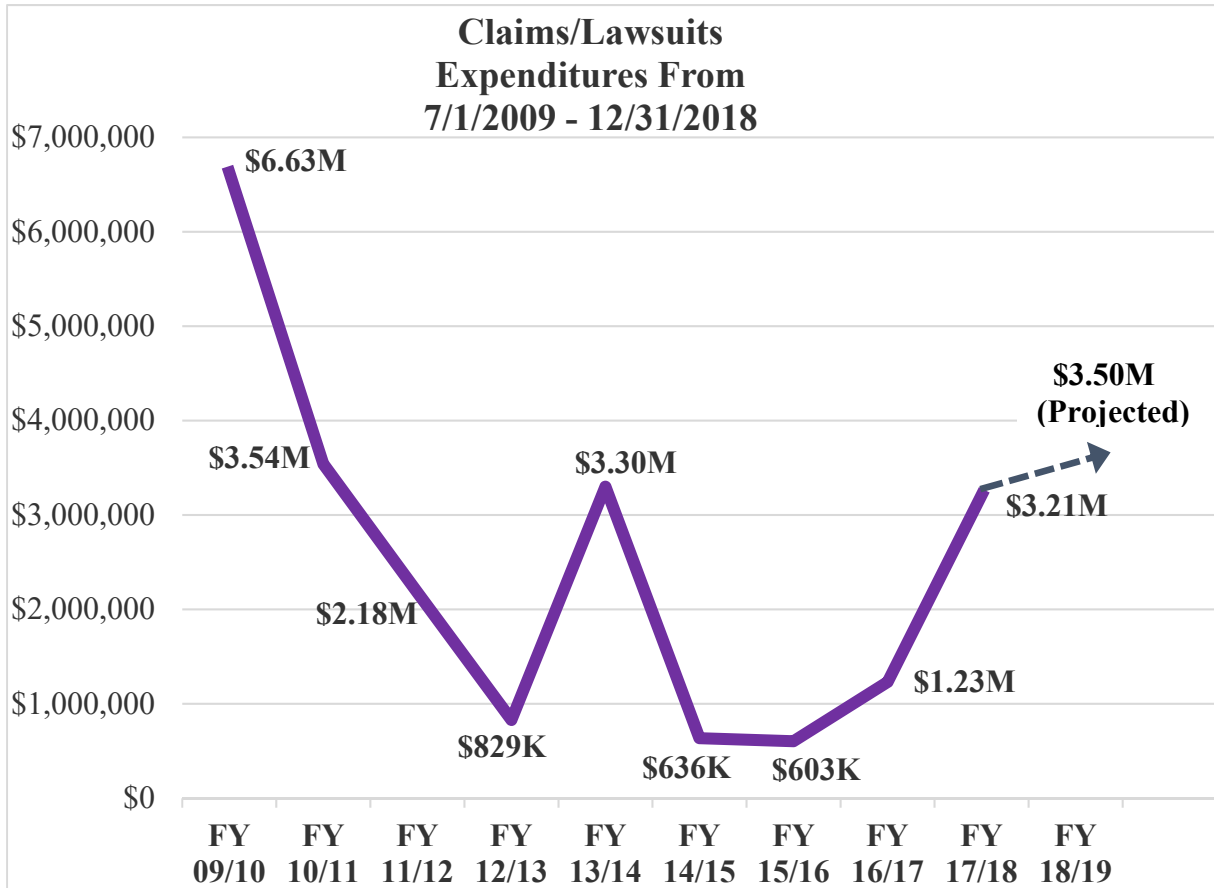
III. Claims And Lawsuits.

The City historically receives around 300 claims and 30 lawsuits each year. A majority of these claims and lawsuits are resolved without making a payment to the claimant.



Based on national and local trends, however, the City anticipates that the number of claims and lawsuits will increase, especially as the City continues to expand by hiring more employees and providing additional services. As the number of claims increases, the City anticipates that payouts from the PPL Trust Fund will increase because, in addition to the increased number of claims and lawsuits, juries are awarding higher damage awards.

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.



Based on the City's high-exposure claims and the litigation trends discussed above, annual payouts to handle and resolve claims will likely increase.

The City, for example, generally incurs 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.

The City is currently defending multiple high-exposure lawsuits. Considering the factors listed above, pressure could be placed on the PPL Trust Fund if a jury awarded significant damages in one or more of the high-exposure cases.

IV. 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 comparison, many cities hire outside counsel to handle their litigation. By handling litigation matters internally, the City reduces the cost and expenses associated with the hiring of outside counsel and generates significant cost savings.

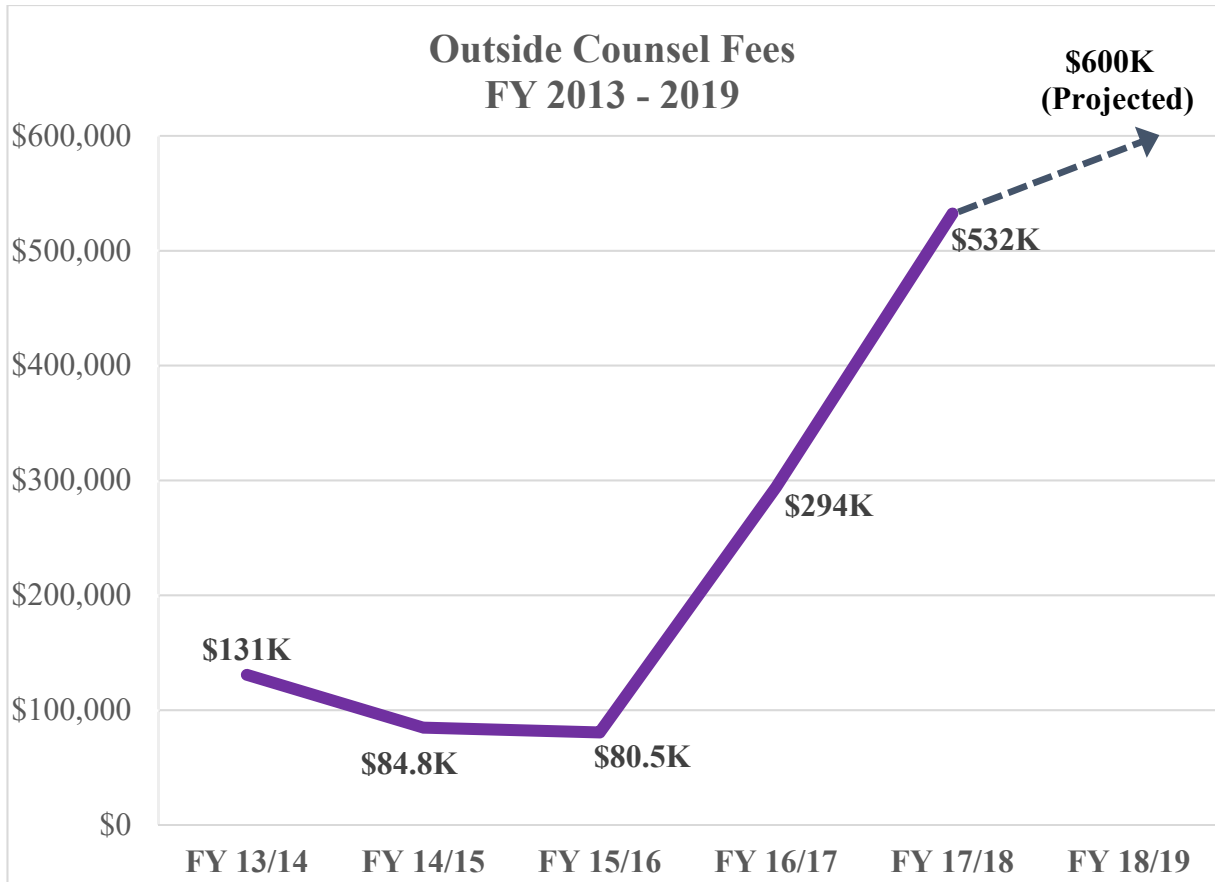
The City's litigation unit is comprised of three attorneys, two paralegals, two legal assistants, and one claims adjuster. The size of the litigation unit compares favorably with that of other cities of comparable size. The City Attorney's Office, for example, has the lowest number of attorneys per capita for cities with comparable populations. Sacramento and Fresno (two of the comparably sized cities) each employ six attorneys to handle those cities' litigation matters.

The litigation unit also helps respond to public record requests. In recent years, the number of public record requests has increased significantly. Attorneys from both the litigation unit and the administrative law unit have had to devote more time responding to these requests. Due to this increase in requests, the City anticipates hiring another attorney to help manage both the increasing number of claims and lawsuits and the increasing number of public record requests.

B. Outside Counsel.

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

The following chart shows the amounts spent on outside counsel for the last five years.



The increase in outside counsel costs has been associated with, among other things, multiple high-exposure cases, specialized litigation matters, and turn-over in the litigation unit.

By hiring an additional attorney for the litigation unit, the City anticipates that it will be better positioned to manage outside counsel expenses so that outside counsel fees will begin to level off and eventually trend downward. In the meantime, because litigation matters can last for multiple years, the City anticipates that it will continue to incur costs for outside counsel until these matters are resolved.

V. Insurance.

Governmental entities are frequent targets for litigation, particularly those entities with law enforcement agencies. As more claims are made against government entities, insurers are required to pay larger amounts to defend and resolve those claims. This likely will reduce the number of insurers that offer municipality insurance and will place pressure on insurers to raise premiums.

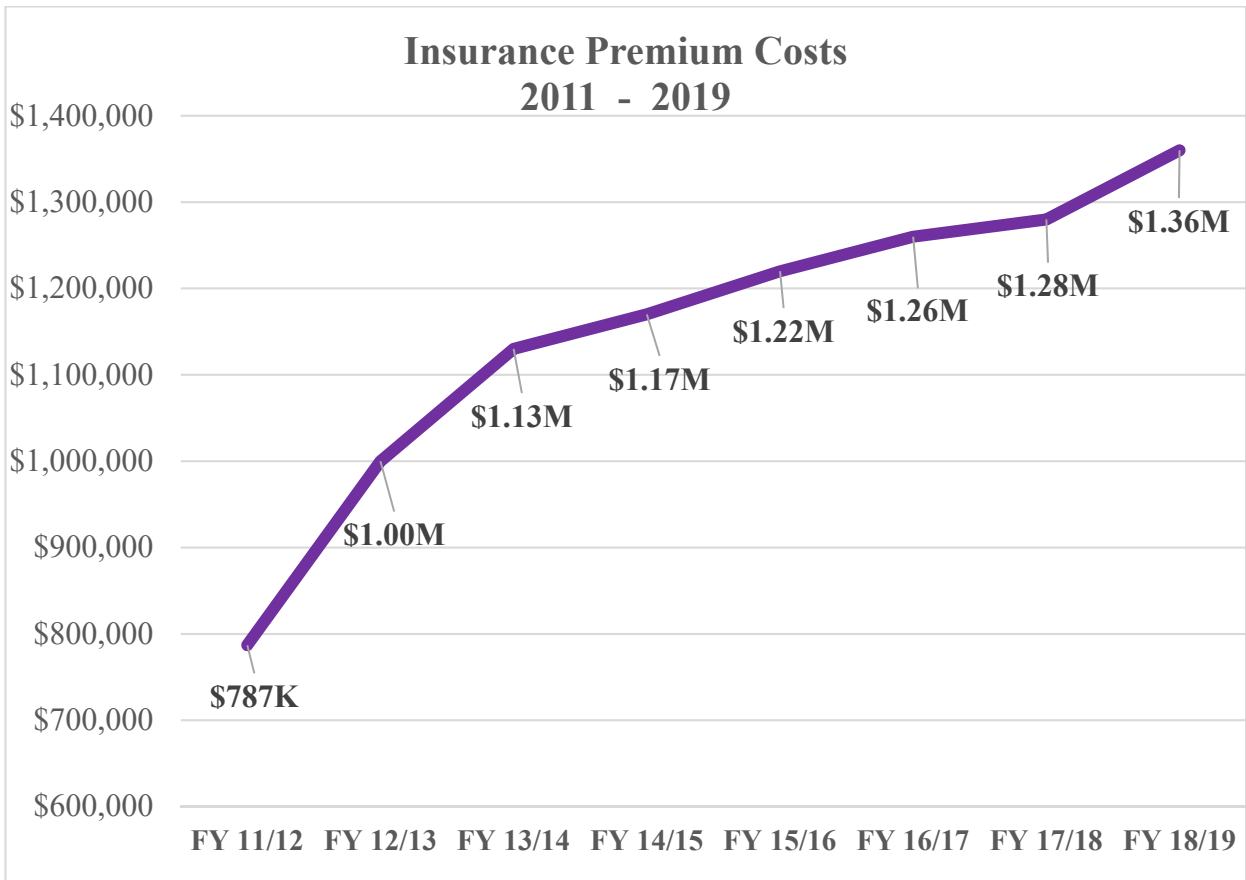
A. Market Changes.

For example, the City anticipates that fewer insurers will offer insurance to municipalities, especially those municipalities with law enforcement agencies. The City has already seen evidence of this because, when the City has requested insurance quotes in the past, insurance companies indicated either that they had abandoned the municipality insurance market and/or that they would not submit a quote for the City's insurance.

For the insurers that do remain in the market, those insurers likely will raise premiums to reflect the increased number of claims and the increased litigation costs. If, for example, a verdict were entered against a governmental entity that was ultimately paid by the entity's insurer, the insurer likely would raise its premiums, potentially significantly, to reflect that expenditure.

B. Insurance Costs.

The following chart shows the annual cost for the City's insurance. While the City works to minimize future premium increases (as discussed below), the City anticipates that premiums will continue to rise.



Prior to 2015, the City requested insurance quotes from multiple insurers on an annual basis. Based on recommendations from the City's insurance broker, and to help manage rising insurance premiums, the City has obtained insurance pursuant to a 2015 and 2018 City Council resolution that allows the City to renew its insurance coverage with its current insurer if the annual increase in premiums does not exceed 2.5%. This resolution helps reduce premium increases by attracting and retaining insurers that want a long-term relationship with the City.

For example, when the City renewed its liability insurance in 2018, the quote provided by the City's current insurer was approximately \$200,000 less than that of the next

lowest quote. By maintaining a long-term relationship with the City's current insurers, the City is working to minimize future premium increases.

The City Attorneys' Office also works with City Departments and its current insurer 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 and potentially minimize future claims and lawsuits.

For example, Travelers Insurance Company provided a four-hour training session on Police liability to Police Department supervisors. In that training, Travelers discussed, among other things, current litigation trends and suggestions regarding best practices.

C. The City's Self-Insured Retention.

The City is currently self-insured for \$3 million per covered event. The City has had this level of SIR for the last 10 years.

The amounts paid by the City towards items like litigation costs, outside counsel fees, and expert witness fees erode the SIR. Once the City's SIR is completely eroded, insurance is intended to cover the remaining expenses, costs, and any damage award associated with defending and resolving the underlying claim or lawsuit.

For claims that exceed the City's \$3 million SIR, the City has purchased \$50 million in excess liability insurance coverage. In the future, insurers may put pressure on the City to raise its SIR in order to reduce the insurers' potential exposure.

VI. Summary.

The City has had a successful year in managing the claims and lawsuits filed against the City and its employees. Pressure continues to exist on the PPL Trust Fund based on, among other things, the high-exposure claims filed against the City and the rising cost of litigation, outside counsel fees, and insurance.

The City will continue to evaluate the PPL Trust Fund and will provide recommendations about the amount that the City should budget to replenish the PPL Trust Fund, whether the PPL Trust Fund balance should be increased, and whether the level of the City's SIR should be increased.

VII. Recommendation.

The City recommends a City contribution of \$7.4 million for FY 18/19. The City also recommends a City contribution of \$6.9 million for FY 19/20.

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2328 HEATHER VALLEY DR
LAS VEGAS NV 89134-6098

ARIZONA INSURANCE LICENSE

License No: 718880

CHARLES LEWIS HALSEY

10100 W CHARLESTON BLVD STE 220
LAS VEGAS NV 89135-5001

NON-RESIDENT

As of January 10, 2019

| LICENSE CLASS | FIRST ACTIVE DATE | LICENSE EFFECTIVE DATE | LICENSE EXPIRATION DATE | LINES OF AUTHORITY | LOA EFFECTIVE DATE |
|--------------------|-------------------|------------------------|-------------------------|--|--|
| Insurance Producer | 08/15/2003 | 08/01/2017 | 07/31/2021 | Property Life Casualty Accident and Health or Sickness | 08/15/2003 12/28/2006 08/15/2003 12/28/2006 |

APPOINTMENT DATA IS NOT COLLECTED, TRACKED OR MAINTAINED IN ARIZONA.

Arizona Department of Insurance
100 N 15th Ave # 102, Phoenix, AZ 85007
<https://insurance.az.gov> | (602) 364-4457

ARTHUR J GALLAGHER RISK MANAGEMENT SERVICES INC
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 2850 GOLF ROAD
 ROLLING MEADOWS IL 60008-4050

ARIZONA INSURANCE LICENSE

License No: 1800001294

ARTHUR J GALLAGHER RISK MANAGEMENT SERVICES INC

2850 GOLF ROAD
 ROLLING MEADOWS IL 60008

NON-RESIDENT

As of February 01, 2018

| LICENSE CLASS | FIRST ACTIVE DATE | LICENSE EFFECTIVE DATE | LICENSE EXPIRATION DATE | LINES OF AUTHORITY | LOA EFFECTIVE DATE |
|----------------------|-------------------|------------------------|-------------------------|------------------------------------|--------------------|
| Insurance Producer | 08/16/2005 | 01/01/2018 | 12/31/2021 | Casualty | 08/16/2005 |
| | | | | Variable Life and Variable Annuity | 08/16/2005 |
| | | | | Property Life | 08/16/2005 |
| | | | | Accident and Health or Sickness | 08/16/2005 |
| | | | | Personal Lines | 08/16/2005 |
| | | | | Surplus Lines Broker | 08/16/2005 |
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 2910 N 44th Street, Suite 210, Phoenix, AZ 85018-7269
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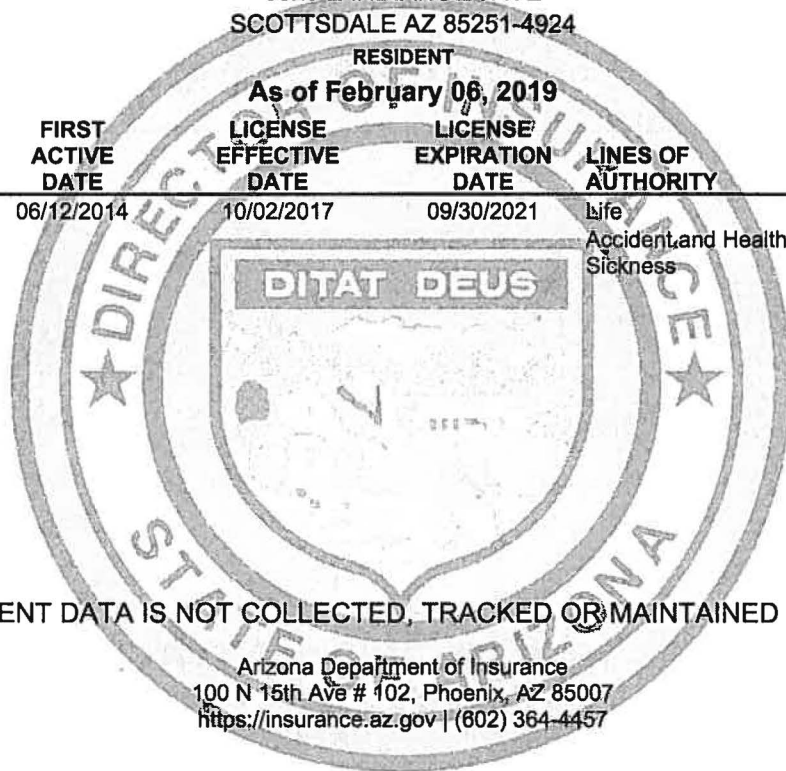
ROBIN LEE REEVES

8525 E INDIANOLA AVE
SCOTTSDALE AZ 85251-4924

RESIDENT

As of February 06, 2019

| LICENSE CLASS | FIRST ACTIVE DATE | LICENSE EFFECTIVE DATE | LICENSE EXPIRATION DATE | LINES OF AUTHORITY | LOA EFFECTIVE DATE |
|--------------------|-------------------|------------------------|-------------------------|--|--------------------------|
| Insurance Producer | 06/12/2014 | 10/02/2017 | 09/30/2021 | Life Accident and Health or Sickness | 06/12/2014 06/12/2014 |



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License No: 1800003654

Buck Global LLC

420 LEXINGTON AVE SUITE 2220
NEW YORK NY 10170

NON-RESIDENT

As of December 31, 2018

| LICENSE CLASS | FIRST ACTIVE DATE | LICENSE EFFECTIVE DATE | LICENSE EXPIRATION DATE | LINES OF AUTHORITY | LOA EFFECTIVE DATE |
|--------------------|-------------------|------------------------|-------------------------|------------------------------------|--------------------|
| Insurance Producer | 03/17/2005 | 04/01/2017 | 03/31/2021 | Accident and Health or Sickness | 03/17/2005 |
| | | | | Variable Life and Variable Annuity | 07/21/2005 |
| | | | | Life | 03/17/2005 |
| | | | | Property | 02/24/2006 |
| | | | | Casualty | 02/24/2006 |

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