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February 19, 2020

Honorable Carmen A. Means
Third Judicial Circuit
14 1st Avenue SE
Watertown, SD 57201
Via Electronic Mail

RE: 14CIV19-303, *Lindgren v. Codington County, et al.*

Judge Means:

This letter is to inform the Court and other parties of a case of which I became aware while researching for the pending appeal. The Court in *Public Entity Pool for Liability v. Score*, 2003 S.D. 17, held that “[n]o provision in South Dakota’s Declaratory Judgment Act allows for an award of attorney’s fees to the prevailing party.” *Id.* at ¶ 8. In a footnote to that statement, the Court cites to cases from other jurisdictions that clarify that the term “costs” is synonymous with “expenses”, rather than fees.

Having read this case, it appears clear that the staff time listed in the Affidavit in Support of Costs submitted on January 10, 2020, is contrary to the costs allowed in this Court’s Order, which granted costs pursuant to SDCL 21-24-11. I have communicated this to the other parties, including Plaintiffs’ attorney, and will make a filing noting for the record that we are no longer seeking to recover attorneys’ fees.

Thank you for your time and attention to this matter. I apologize for the inconvenience.

Sincerely,

Kristen N. Edwards
Special Assistant Attorney General