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November 14, 2013

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YAVAPAI COUNTY SHERIFF'S OFFICE
255 East Gurley Street
Prescott, Arizona 86301

Ana Wayman-Trujillo, Clerk of the Board
YAVAPAI COUNTY Bd. OF SUPERVISORS
1015 Fair Street
Prescott, Arizona 86305

Re: A.R.S. § 12-821.01(A) Notice of Claim—Yarnell Hill Fire

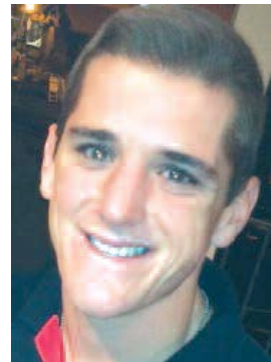
Name of Decedent:	Grant Quinn McKee
Date of Death:	June 30, 2013
Claimant:	Marcia McKee (Mother of Decedent)

Dear Public Entities:

Introduction

We represent Claimant Marcia McKee, the mother of Grant Quinn McKee. Because of the negligence of the State of Arizona, Yavapai County, and the City of Prescott—and because of the negligence of their relevant agencies, departments, officials, employees, and agents—Grant McKee died on June 30, 2013, during the Yarnell Hill Fire. With the exercise of reasonable care, Grant’s death was preventable. In fact, with the exercise of reasonable care, no member of the Granite Mountain Interagency Hotshot Crew would have died on June 30, 2013.

Grant McKee, and 18 of his fellow crewmembers, died because the City of Prescott, Yavapai County, and the State of Arizona (the “liable public entities”) violated all 10 of the nationally recognized *Standard Firefighting Orders*. For ease of reference by firefighters who battle wildfires and forest fires across the nation, the *Standard Firefighting Orders* appear in many sources, including on the final page of the *Red Book*, which has the full title of U.S. Forest Service, *Interagency Standards for Fire and Fire Aviation Operations*, NFES 2724 (Jan. 2013).



The 10 *Standard Firefighting Orders* are mandatory principles guiding all competent, responsible firefighting managers and personnel assigned to combat fires like the Yarnell Hill Fire. On its website, the National Interagency Fire Center explains that the 10 Standard Firefighting Orders were “developed in 1957 by a task force studying ways to prevent firefighter injuries and fatalities.” The 10 *Standard Firefighting Orders* are “firm.” That is, according to the National Interagency Fire Center: “We don’t break them; we don’t bend them. All firefighters have the right to a safe assignment.”

The ten *Standard Firefighting Orders*, and a brief summary of their violations in this case, are as follows:

- *Keep informed on fire weather conditions and forecasts.*

The liable public entities negligently used poor and untimely information about the relevant fire weather conditions and forecasts.

- *Know what your fire is doing at all times.*

The liable public entities lost track of what the fire was doing well before Grant McKee and his crew became engulfed in smoke and flames.

- *Base all actions on current and expected behavior of the fire.*

The liable public entities did not base their firefighting actions on the fire's current and expected behavior.

- *Identify escape routes and safety zones and make them known.*

The liable public entities failed to identify available escape routes and safety zones, and thus failed to make escape routes and safety zones known to Grant McKee and his crew.



- *Post lookouts when there is possible danger.*

Despite the possible danger of deadly, rapid, and erratic fire movement, the liable public entities failed to post and maintain lookouts at strategic locations.

- *Be alert. Keep calm. Think clearly. Act decisively.*

Instead of being alert, keeping calm, thinking clearly, and acting decisively, the liable public entities were unaware of the weather and fire changes and of the location of Grant McKee and his crew, were not professionally calm in managing the firefighters, were not thinking clearly about what needed to be done to protect the firefighters, and acted indecisively.

- *Maintain prompt communications with your forces, your supervisor and adjoining forces.*

The liable public entities negligently failed to maintain prompt and accurate communications with the firefighting forces, failed to maintain contact with all relevant supervisors and resources, and failed to maintain communications among and between adjoining forces.



- *Give clear instructions and insure they are understood.*

The liable public entities failed to give clear instructions to Grant McKee's crew and to support personnel and failed to insure that instructions were understood.

- *Maintain control of your forces at all times.*

The liable public entities had scant control over the firefighting forces, especially as the situation confronting Grant McKee and his crew deteriorated.

- *Fight fire aggressively, having provided for safety first.*

The liable public entities failed to provide for safety first as they were conducting the fight against the fire.

The liable public entities faced many hazardous conditions that the U.S. Forest Service's *Red Book* warns are "Watch out Situations." The *Red Book* lists 18 "Watch out Situations." Once again, because of the importance of having a list of those "Watch out Situations" available for easy reference, they appear on the last page of the *Red Book*. The liable public entities faced—and negligently failed to safeguard against—almost all of the "Watch out Situations." These are the "Watch out Situations" that the liable public entities negligently failed to safeguard against:

- Fire not scouted and sized up.
- Safety zones and escape routes not identified.
- Unfamiliar with weather and local factors influencing fire behavior.
- Uninformed on strategy, tactics, and hazards.
- Instructions and assignments not clear.
- No communication link with crew members/supervisor.
- Unburned fuel between you and fire.
- Cannot see main fire, not in contact with anyone who can.
- On a hillside where rolling material can ignite fuel below.
- Weather is getting hotter and drier.
- Wind increases and/or changes direction.
- Getting frequent spot fires across line.
- Terrain and fuels make escape to safety zones difficult.

In summary, the liable public entities carelessly and negligently failed to take protective measures against at least 13 of the “Watch out Situations” that confronted Grant McKee and his crew and negligently violated all ten of the *Standard Firefighting Orders*. That negligence killed Grant McKee and the 18 other members of the Granite Mountain Interagency Hotshot Crew.

1. The Sum-Certain Demands and the Notice of Claim Process.

Claimant is making sum-certain demands. First, she is demanding \$12 million from the State of Arizona. Second, she is demanding \$12 million from the City of Prescott. Third, she is demanding \$12 million from Yavapai County. For each other public entity that is subject to this notice of claim as a jural entity, Claimant is demanding the separate sum of \$12 million. Claimant intends to make, and has

made, a sum-certain demand against each liable public entity in the amount of \$12



million. In the alternative, if the public entities want to pool their resources, and make one aggregate settlement offer of \$12 million, the Claimant is willing to accept the sum of \$12 million as settlement in full. This willingness to negotiate and accept an aggregate settlement is not meant to, and does not, detract from the sum-certain demands, which are made to comply with the requirements of the notice-of-claim statutes.

This notice of claim makes clear sum-certain demands. If the demanded amounts are paid within 60 days of the date of service of this notice of claim, this matter will be at an end. If the City of Prescott, Yavapai County, and the State of Arizona reject the notice of claim, or fail to accept the settlement offers contained in this notice of claim within 60 days of the date of its service, Claimant reserves the right to institute legal action against the City of Prescott, Yavapai County, and the State of Arizona at her sole discretion.

This notice of claim is a good-faith effort to negotiate a fair settlement. Claimant trusts and expects that the State of Arizona, Yavapai County, and the City of Prescott will take this opportunity to negotiate a fair settlement. Marcia McKee reasonably believes that this notice of claim satisfies all legal and procedural requirements. As a matter of government fairness to its citizens, Claimant expects that the State of Arizona, Yavapai County, and the City of Phoenix will immediately inform Claimant about any perceived shortcomings in this notice of claim. Claimant can then timely correct them. Otherwise Claimant will reasonably conclude that the notice of claim is proper. Claimant will rely on silence on the part of the State of Arizona, Yavapai County, and the City of Prescott as full agreement with Claimant's reasonable belief that the notice of claim is proper and sufficient.

Claimant understands that some legal authorities regard a notice of claim as something other than a settlement offer. This notice of claim *is* a settlement offer. Claimant reminds the public entities that nothing in this notice of claim can be used as evidence in any judicial or administrative proceeding, since this is a settlement offer. *See* Arizona Rule of Evidence 408(a).

2. The Evasive, Incomplete *Yarnell Hill Fire Report* Compounds the Problem of Limited Information When a Claimant is Presenting a Notice of Claim Without the Benefit of Full Discovery and Full Investigation.

Because of the 180-day statute of limitations for filing this notice of claim, Claimant has not had a full and fair opportunity to conduct formal discovery and to obtain reports, documents, and information from the public agencies and public employees involved in the Yarnell Hill Fire and in its investigation. Still, this notice of

claim is as accurate as the limited information allows.

Claimant and her legal counsel carefully reviewed the *Yarnell Hill Fire Serious Accident Investigation Report* (“*Yarnell Hill Fire Report*”) that was released to the public on September 23, 2013.

The *Yarnell Hill Fire Report* is a whitewash. Its primary goal is to avoid blaming anyone. As a result, an trusting, uninformed person reading the *Yarnell Hill Fire Report* uncritically would think that the death of 19 men was just bad luck and no one’s fault—which is false.

In addition, the *Yarnell Hill Fire Report* failed to follow the clear format and guidelines set out in the National Interagency Fire Center’s *Interagency Serious Accident Investigation Guide* (Aug. 2013). Among other things, the publicly released *Yarnell Hill Fire Report* is supposed to be an exclusively *Factual Report* with no inferences, conclusions, or recommendations.¹ Instead, the *Yarnell Hill Fire Report* is built on suppositions and inferences, spends two pages on conclusions,² and devotes another page to recommendations.³

There is supposed to be a *Management Evaluation Report*, which is meant to be the second part of the *Final Report*.⁴ The purpose of the *Management Evaluation Report*, which is intended for internal agency use only, is to review: (1) management policies, (2) practices, (3) procedures, and (4) human and organizational factors related to the accident.⁵ The *Management Evaluation Report* takes findings that the *Factual Report* identifies and then identifies the cause of causes of the accident.⁶ In addition to information used from the *Factual Report*, the *Management Evaluation Report* contains: (1) findings identified in the *Factual Report*, (2) the cause or causes of the accident, (3) conclusions and observations, (4) confidential information, and (5) recommendations for corrective measures.⁷

Even before the *Yarnell Hill Fire Report* appeared, there were concerns that the report would fail to follow the guidelines of the National Interagency Fire Center’s

¹ *Interagency Serious Accident Investigation Guide* at 81, § 7.7 (Aug. 2013).

² *Yarnell Hill Fire Report* at 42-43 (Sept. 23, 2013).

³ *Yarnell Hill Fire Report* at 44 (Sept. 23, 2013).

⁴ *Interagency Serious Accident Investigation Guide* at 81, § 7.8 (Aug. 2013).

⁵ *Interagency Serious Accident Investigation Guide* at 81, § 7.8 (Aug. 2013).

⁶ *Interagency Serious Accident Investigation Guide* at 81, § 7.8 (Aug. 2013).

⁷ *Interagency Serious Accident Investigation Guide* at 82, § 7.8 (Aug. 2013).

Interagency Serious Accident Investigation Guide. Those concerns were prophetic.⁸ As a result of failing to follow the mandatory report guidelines, the *Yarnell Hill Fire Report*'s authors produced a blame-avoiding, muddled, and untrustworthy cover-up.

Claimant anticipates that more complete and more objective information will be forthcoming when the Arizona Division of Occupational Safety and Health releases its report somewhere near the end of 2013.⁹ Other objective reports may also be made and become available. But at this point, Claimant can only make this notice of claim based on the available information, including based on the deficient *Yarnell Hill Fire Report*.

In short, while this notice of claim is as factually accurate and is as complete as the Claimant can make it in the limited time available under the 180-day statute of limitations, the notice of claim is inherently not as complete as it would be with full and fair discovery, disclosure, and public transparency. Claimant therefore reserves the right to supplement and amend this notice of claim as needed.

Finally, common sense and fundamental fairness require that, if an effort is made to introduce any part of this notice of claim in argument or evidence, Claimant has the right to explain that the notice of claim was a settlement offer presented under an extremely short deadline and without the opportunity to conduct a proper, thorough investigation or to obtain statements, documents, and other evidence directly from the City of Prescott and the State of Arizona. Claimant therefore reserves the right to read this statement to the trier of fact, and to use other documents or testimony, as needed, to place this notice of claim in its proper context as an initial settlement offer.

3. The Presently-Known Negligent Acts and Omissions That Caused or Contributed to the Death of Grant McKee and the 18 Other Members of Granite Mountain Interagency Hotshot Crew.

On June 28, 2013, the Arizona State Forestry Division, in conjunction with the other liable public entities, took charge of the effort to fight, channel, and contain the Yarnell Hill Fire firefighting effort, and appears to have retained primary control during the events leading up to the death of Grant McKee and the other Granite Mountain Hotshots in the afternoon of June 30, 2013. As far as constructing a logical, accurate sequence of events, the *Yarnell Hill Fire Report* is almost useless. Claimant hopes that the upcoming report by the Arizona Department of Occupational Safety and Health will be more accurate and forthcoming and that, as public records and other information

⁸ *Yarnell Report Rules Questioned*, Arizona Republic A-1 (Sept. 20, 2013).

⁹ *Another Report Due by Year-End*, Arizona Republic A-1 (Sept. 30, 2013).

become available, the full truth about what happened will emerge.

At this point, it is apparent that the liable public entities carelessly let the Granite Mountain Hot Shots move into a rugged, brush-filled area where escape from the oncoming fire was impossible. The liable public entities had lost track of the location and direction of movement of the Granite Mountain Hot



Shots, had deployed them carelessly, had negligently failed to support them or to coordinate their movements with other assets in the area, had failed to maintain consistent, effective communication with them, had recklessly failed to realize the extreme peril that confronted them, had carelessly failed to provide them with one or more logical and accessible escape routes or areas of refuge, and had negligently failed to deploy aerial assets to assess their peril and drop fire retardant chemicals to help protect them.

The liable public entities carelessly and negligently let Grant McKee and his fellow crewmembers die excruciating deaths. With the use of modern technology and the application of old-fashioned common sense, the death of these fine men was entirely preventable.

In short, the negligence of the liable public entities caused or contributed to causing the death of Grant McKee and his fellow crewmembers. Among other things, the following instances of negligence are already apparent:

Negligent Operations

1. As described above, the liable public entities negligently violated all 10 of *Standard Firefighting Orders* set out in the U.S. Forest Service, *Interagency Standards for Fire and Fire Aviation Operations*, NFES 2724 (Jan. 2013) by:

- Failing to keep informed on fire weather conditions and forecasts.
- Failing to know what the fire was doing at all times.
- Failing to base all actions on current and expected behavior of the fire.
- Failing to identify and report on escape routes and safety zones.
- Failing to post lookouts when there is possible danger.
- Failing to be alert, keep calm, think clearly, and act decisively.
- Failing to maintain prompt communications with the firefighting forces, the supervisors, and adjoining forces.
- Failing to give clear instructions and insure they are understood.
- Failing to maintain control of the firefighting forces at all times.
- Failing to fight the fire aggressively, having provided for safety first.



2. As described above, the liable public entities negligently failed to provide proper, competent, and safe responses to the following “Watch out Situations” described in the U.S. Forest Service, *Interagency Standards for Fire and Fire Aviation Operations*, NFES 2724 (Jan. 2013):

- Fire not scouted and sized up.
- Safety zones and escape routes not identified.
- Unfamiliar with weather and local factors influencing fire behavior.
- Uninformed on strategy, tactics, and hazards.
- Instructions and assignments not clear.
- No communication link with crew members/supervisor.

- Unburned fuel between you and fire.
 - Cannot see main fire, not in contact with anyone who can.
 - On a hillside where rolling material can ignite fuel below.
 - Weather is getting hotter and drier.
 - Wind increases and/or changes direction.
 - Getting frequent spot fires across line.
 - Terrain and fuels make escape to safety zones difficult.
3. The liable public entities negligently failed to assign an independent division supervisor to directly and vigorously oversee the activities of the Granite Mountain Hotshots on June 30, 2013.
 4. The liable public entities negligently failed to coordinate the operations of the ground-firefighting and air-firefighting assets to ensure mutual protection and support that would have safeguarded the Granite Mountain Hotshots on June 30, 2013.
 5. The liable public entities negligently failed to maintain consistent, reliable, meaningful communications with the Granite Mountain Hotshots on June 30, 2013.
 6. The liable public entities negligently failed to obtain and disseminate accurate, reliable, and timely information on the location, intensity, and movement of the fire on June 30, 2013.
 7. The liable public entities negligently failed to obtain and disseminate adequate, reliable, and timely thunderstorm, wind, and other weather information to the Granite Mountain Hotshots and to others on June 30, 2013.
 8. The liable public entities negligently failed to order or direct the Granite Mountain Hotshots to move to a position of safety when the wildfire shifted to a position that could threaten their safety on June 30, 2013
 9. The liable public entities negligently failed to evacuate the Granite Mountain Hotshots when conditions became so complex and deadly that evacuation was a proper course of action on June 30, 2013
 10. The liable public entities negligently failed to inform the Granite Mountain Hotshots of available locations where they would be safe from being engulfed by

the fire on June 30, 2013.

11. The liable public entities negligently failed to use air assets to drop fire retardant on and in the path of the fire that was threatening to engulf the Granite Mountain Hotshots on June 30, 2013,

Negligent Provision of Equipment



12. The liable public entities negligently failed to provide adequate, reliable communications gear to the Granite Mountain Hotshots that they could have used to maintain reliable communications on June 30, 2013.
13. The liable public entities negligently failed to provide GPS tracking equipment to the Granite Mountain Hotshots that would have reported their exact position at all times to the personnel managing the June 30, 2013 firefighting effort.
14. The City of Prescott negligently provided the Granite Mountain Hotshots with fire shelters that were incapable of withstanding the fire conditions they would be facing in their general operations in Arizona and, in particular, in the brush-filled rugged areas they would be operating in during the Yarnell Hill Fire on June 30, 2013.
15. The liable public entities negligently failed to warn and instruct the Granite Mountain Hotshots that deploying fire shelters under the conditions they would confront in fighting the Yarnell Hill Fire on June 30, 2013 would lead to death because the fire shelters were inadequate to protect the Granite Mountain Hotshots under any but the mildest of conditions.

Negligent Personnel and Training Practices

16. The Arizona State Forestry Division and other liable public entities negligently requested the federal Southwest Coordinating Committee in Albuquerque to dispatch the Granite Mountain Hotshots to combat the Yarnell Hill Fire when the Arizona State Forestry Division and the other liable public entities knew, or should have known, that the Granite Mountain Hotshots had just completed exhausting work on other fires and had reached their maximum consecutive workdays.
17. The liable public entities negligently failed to ensure that the Granite Mountain Hotshots had an adequate number of crewmembers that were fully qualified to fill permanent/career positions.
18. The liable public entities negligently failed to ensure that all of the members of the Granite Mountain Hotshots had adequate training and certification.
19. The liable public entities negligently failed to require completion of the mandatory annual preparedness reviews for the Granite Mountain Hotshots.
4. **The City of Prescott is Not Entitled to the Typical Employer Immunity Provided in A.R.S. § 23-1022(A).**

In relevant part, A.R.S. § 23-1022(A) provides that the statutory right to recover workers' compensation benefits for an employee's death "is the exclusive remedy against the employer or any co-employee acting in the scope of his employment." That immunity is unavailable to the City of Prescott since Marcia McKee did not make a claim for or receive workers' compensation benefits for Glenn McKee's death and because, even if she had, the City of Prescott failed to properly post the workers' compensation election-of-benefits rule in the workspace of the Granite Mountain Hotshots. *See* A.R.S. §§ 23-906 and 23-1022(A).

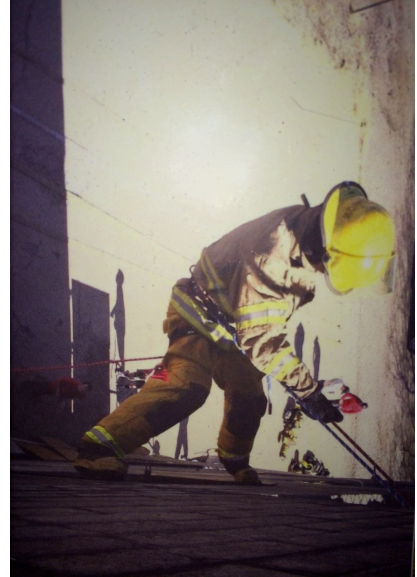
5. **The Death of Grant McKee Has Caused Tremendous Suffering to Marcia McKee.**

Marcia McKee always had a close and loving relationship with her son, but that bond was growing even stronger in the years before his death. Just after he had finished his basic training to become a Granite Mountain Hotshot, Grant McKee had sent his mother a note explaining how much she meant to him. He used the word "Marcia" to

start the note because, as he later explained to her, they were both adults, and could now appreciate each other both as mother and son, and as adults:

Marcia, I don't believe I would be where I am today if it was not for you. You gave me all you could and would put your life on the line for me. Now as an adult I see the struggles you went through to make my life the best it could be, you were able to make the best of every situation and I commend you for it. We are best friends and that will never change. You are first my mother and second my friend for life. You're an amazing person and don't let anyone tell you different.

Love, your graduate,
Grant Quinn McKee



Marcia treasures that note, because it came from Grant's heart and soul, and showed just how much he cared for her as a person, as a friend, and as a mother. After Grant died, Marcia wrote her own note to Grant, trying to express in her own words what he had meant to her, and how much she missed him:

To My Son Grant McKee 2013

I not only lost a son but I also lost my very best friend and I know I made a promise that if anything should ever happen to you I would be right behind you. Don't think for a minute that I don't always think about me saying that to you because I always do. Grant, you were my life and how can one believe in God when he took away the only thing that matters to me. I will never be the same person that I once was and now with a broken heart I feel so empty inside. How will I go on living my life Grant McKee is my son. You are my one and only hero. I miss you and love you so very much. You'll be missed dearly Grant.

I love you. Mom xo

When asked to provide some comments on the loss of her son for this notice of claim, Marcia took a considerable amount of time, and, from her heart, wrote:

From the time I open my eyes in the morning until the time I close

them at night, knowing the cause of my son's death, the pain and suffering for his last gasp of air that my baby had to go through and the terror he must have felt, is agony on my heart every single day.

Losing my son, my best friend, and my only child, at the age of only 21, it's not supposed to be like this. I've had to come to the realization that i will never hear "Mom" spoken again from my son. No more Mother's Day cards or phone calls. Nor will I ever get to see him walk down the aisle or be called grandma. My life was also taken that day because he was my life.

So now what do I have to look forward to? Grant was my world. Now i have an empty world with a broken heart. How does one go on living?

There is no cure for grief. It will always be with me. I will never be that same person I once was. I miss him so much.



Our last phone conversation was me telling him to be careful and his response was "What are the odds of me dying in a fire? Think about it Mom." I told him I loved him and still be careful. He said to me "I love you too Mom." That was the last time I'll ever hear my baby call me Mom.

Perhaps nothing could better explain how Grant's death has left his mother so devastated. All day, every day, that loss is with her. Her best and finest hopes, dreams, and plans for the future centered on Grant and on his increasingly bright and promising prospects as a son, future father, man, and friend that his mother had come to respect as much as love. For as long as she lives, Marcia will miss Grant. The loss of his companionship, affection, and love fully support the damages that she has requested in this notice of claim.

Conclusion

The liable public entities should appreciate their liability and the tremendous loss that the death of Grant McKee has caused for his mother. We anticipate that the liable public entities will fairly and promptly evaluate this notice of claim and agree that a prompt, fair settlement is the best course for all concerned.

This notice of claim—and the facts, witnesses, reports, and far more complete records that the liable public entities, and others, have in their possession—will provide the liable public entities with the information reasonably needed to conduct a good-faith evaluation of the notice of claim.

If the liable public entities that receive service of this notice of claim reasonably believe that they need more information to evaluate the notice of claim, they must let our office know at once. We can then promptly and efficiently work together with them to discover from their considerable factual and documentary resources any additional information reasonably necessary to help evaluate and settle this claim.

DATED this 14th day of November, 2013.

KNAPP & ROBERTS, P.C.

Craig A. Knapp
Attorney for Claimants