

**IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI**

| | | |
|-------------------------------|---|----------|
| STATE OF MISSOURI, ex rel. |) | |
| Attorney General Josh Hawley, |) | |
| |) | |
| Plaintiff/Relator, |) | |
| |) | |
| v. |) | Case No. |
| |) | |
| CITY OF ST. LOUIS, |) | |
| |) | |
| Defendant. |) | |

PETITION FOR DECLARATORY RELIEF

1. This is a declaratory judgment action brought pursuant to Section 527.010, RSMo. *et seq.*, seeking a declaration adjudicating the rights and obligations of the parties with regard to the State Legal Expense Fund (“LEF”). §§ 105.711–105.726, RSMo. The LEF is funded by appropriations from the Missouri General Assembly and is used to pay judgments against the State of Missouri, its agencies, and certain other state-affiliated entities and individuals. § 105.711, RSMo.

2. The present declaratory judgment action arises out of a case filed in the federal district court for the Eastern District of Missouri, *Allen, et al. v. City of St. Louis*, Case No. 4:14-cv-01398 (the “Allen Federal Case”). Defendants in the Allen Federal Case, including the City of St. Louis, the former members of the St. Louis Board of Police Commissioners in their official capacities, and several individually named St. Louis City police officers, jointly

entered into a Release and Settlement Agreement with the plaintiffs (the “Allen Plaintiffs”) to resolve the Allen Federal Case.

3. A dispute has arisen between the parties to this lawsuit as to what portion, if any, of the settlement consideration payable under the Release and Settlement Agreement would be borne by the LEF or the City of St. Louis.

Parties

4. Plaintiff Josh Hawley is the duly elected, qualified, and acting Attorney General for the State of Missouri.

5. The Attorney General has the authority to bring this suit in order to protect the interests and rights of the State. § 27.060, RSMo. Further, the Attorney General must approve all payments from the LEF. § 105.711, RSMo.

6. Defendant City of St. Louis (the “City”) is a municipal corporation located within the State of Missouri. The City employs St. Louis City police officers. The City is the successor-in-interest to the St. Louis Board of Police Commissioners. § 84.344, RSMo. The City was a named defendant in the Allen Federal Case.

Jurisdiction and Venue

7. Jurisdiction is proper in this Court as the parties are located in Missouri, and the case involves the interpretation of Missouri state law.

8. Venue is proper pursuant to § 508.060, RSMo, which provides that actions against any county shall be commenced in the circuit court of such county. § 508.060, RSMo. The City of St. Louis is a county for venue purposes under the statute. *See State ex. rel City of St. Louis v. Kinder*, 698 S.W.2d 4 (Mo. 1985).

Factual Allegations

9. On August 12, 2014, George Allen filed a complaint in the United States District Court for the Eastern District of Missouri, Case No. 4:14-cv-01398, claiming violations of his constitutional rights stemming from his 1983 conviction and subsequent imprisonment for the rape and murder of a woman named Mary Bell.

10. Allen's conviction was eventually overturned.

11. In his federal complaint, Allen claimed that the defendant employees of the St. Louis Metropolitan Police Department ("SLMPD") investigating Bell's murder allegedly fabricated evidence, illegally withheld exculpatory evidence that demonstrated Allen's innocence, and coerced a false confession from him, all of which Allen claimed led to his conviction.

12. Allen's federal complaint named as defendants: the City of St.

Louis; Richard Gray, Bettye Battle-Turner, Thomas Irwin, and Erwin O. Switzer, in their official capacities as members of the St. Louis City Board of Police Commissioners; Francis Slay in his official capacity as an ex-officio member of the St. Louis City Board of Police Commissioners; Samuel Dotson in his official capacity as Chief of Police of the SLMPD; and several employees of the SLMP, Joseph Crow, Terry James, Mark Burford, Herbert Riley, Gerald Hart, William J. Wilson, Thomas P. Rowane, and Aloy LaGates, in their official and individual capacities.

13. Defendants Richard Gray, Bettye Battle-Turner, Thomas Irwin, Erwin O. Switzer, Francis Slay, John Hayden, Jr., Joseph Crow, Terry James, Mark Burford, William J. Wilson, and the Estate of Thomas P. Rowane are referred to herein as the “Police Defendants.”

14. In November 2012, the Circuit Court of Cole County granted a writ of habeas corpus filed by Allen and vacated Allen’s conviction.

15. The Missouri Court of Appeals affirmed the vacatur on December 26, 2012.

16. On January 18, 2013, the St. Louis Circuit Attorney dismissed Allen’s indictment. Thereafter, Allen was released from prison.

17. On August 12, 2014, Allen filed his federal court complaint.

18. After it was filed, defense of the Allen Federal Case was tendered to the Missouri Attorney General’s Office for representation of the Police

Defendants.

19. The Attorney General's Office handled the defense of the Allen Case on behalf of the Police Defendants.

20. The City of St. Louis was separately represented by counsel for the City.

21. While the Attorney General's Office provided legal representation to the Police Defendants, at no time did the Attorney General's Office or any other State office or official advise the Police Defendants or the City of St. Louis that the LEF would be responsible for any settlement or judgment against the Police Defendants.

22. On December 13, 2017, the Police Defendants and the City of St. Louis executed the Release and Settlement Agreement (the "Allen Settlement") (attached hereto as Exhibit A), agreeing with the Allen Plaintiffs to resolve the Allen Federal Case.

23. Pursuant to the Allen Settlement, defendants agreed to pay to the Allen Plaintiffs settlement consideration totaling \$13,825,000 (half to be paid by the City and half to be paid by the State of Missouri). The settlement agreement stipulated that an initial \$5 million payment would be made within 45 days of execution, with \$2 million payments due annually thereafter.

24. On December 12, 2017, and in conjunction with execution of the Allen Settlement, the City of St. Louis and the State of Missouri jointly

executed a Side Letter Agreement (the “Side Agreement”) (attached hereto as Exhibit B).

25. The Side Agreement stipulates that the City and the State of Missouri “disagree about the respective responsibility of the City and the State Legal Expense Fund to pay for all or part of the settlement amounts” due under the Allen Settlement.

26. Under the terms of the Side Agreement, the City and the State agreed to allocate the initial \$5 million payment due under the Allen Settlement as follows: \$2.5 million to be paid by the State of Missouri and \$2.5 million to be paid by the City.¹

27. The Side Agreement further provides: “By making these initial payments, the Parties do not concede that the aforementioned allocation of responsibility for the initial \$5 million installment payment represents the proper allocation of responsibility for that payment. Rather, this initial allocation is made solely for the purpose to facilitate resolution of the Lawsuit.”

28. The Side Agreement further provides that “within 60 days after the execution of this Side Letter Agreement, the State will initiate in a Missouri Circuit Court a declaratory judgment action to determine who must

¹ Under the Side Agreement, a portion of the \$2.5 million payment allocated to the City was to be covered by LEF funds “in partial satisfaction of amounts owed to the City from previous fiscal years, but that were withheld pending the resolution of the case entitled *State ex rel. Attorney General Joshua Hawley v. City of St Louis*, No. ED104564, in the Missouri Court of Appeals for the Eastern District.”

pay for the settlement of the Lawsuit”, including “allocation of responsibility for (i) the initial \$5 million installment payment, and (ii) all remaining installment payments required by the settlement”.

29. The Side Agreement stipulates that: “if the determination in the declaratory judgment action reallocates responsibility for any of the above referenced payments, the party benefiting from such reallocation will have the right to recoup payments already made—including payments made toward the initial \$5 million installment payment—consistent with the judgment in the declaratory judgment action.”

30. On January 5, 2018, pursuant to the terms of the Allen Settlement, the State of Missouri paid \$2.5 million to the Allen Plaintiffs out of the LEF.

31. The State contends that the maximum amount that may be paid out of the LEF toward the Allen Settlement is one million dollars, and that the City of St. Louis is responsible for the entirety of the Allen Settlement beyond the LEF’s one million dollar contribution.

32. Upon information and belief, it is the City of St. Louis’ position that the LEF is responsible for the entirety of the Allen Settlement.

33. Because there is a dispute between the State and the City of St. Louis regarding whether the Allen Settlement should be paid by the LEF or the City, the State seeks a declaratory judgment finally adjudicating the rights and responsibilities of the parties with regard to the allocation of responsibility

between the LEF and the City of St. Louis for payment of the Allen Settlement.

34. Adjudication of this matter will provide certainty for the Police Defendants, the City, and the Attorney General's Office (which must approve all payments from the LEF) as to who will pay future payments due under the Allen Settlement, and whether any party has a right of recoupment for payments already made under the Allen Settlement.

35. There is no other dispute pending in state court involving these parties and these facts, and Plaintiff has no adequate remedy at law.

Count I – Declaratory Judgment

36. The State incorporates herein the allegations of paragraphs 1-35.

37. Effective August 28, 2005, the State Legislature amended the Missouri statute involving the LEF, § 105.726, RSMo., to state as follows:

Moneys in the state legal expense fund shall not be available for the payment of any claim or any amount required by any final judgment rendered by a court of competent jurisdiction against a board of police commissioners established under chapter 84, including the commissioners, any police officer . . . other employees, agents, representative[s], or any other individual or entity acting or purporting to act on its or their behalf. Such was the intent of the general assembly in the original enactment of sections 105.711 to 105.726, and it is made express by this section in light of the decision in *Wayman Smith, III et al. v. State of Missouri*, 152 S.W.3d 275.

§ 105.726.3, RSMo.

38. Section 105.726.3 further provides:

Except that the commissioner of administration shall reimburse from the legal expense fund the board of police commissioners established under section 84.350, and any successor-in-interest established pursuant to section 84.344, for liability claims otherwise eligible for payment under section 105.711 paid by such board **up to a maximum of one million dollars per fiscal year.**²

Id. (emphasis added).

39. The City is the successor-in-interest to the St. Louis Board of Police Commissioners pursuant to § 84.344, RSMo.

40. Per the statute's plain language, after August 28, 2005, claims against St. Louis police board commissioners and St. Louis police officers shall be reimbursed out of the LEF only up to a maximum amount of one million dollars per fiscal year.

41. Allen's conviction was not vacated until 2012, and he did not file his Complaint until August 12, 2014. Both events occurred long after the statute was amended on August 28, 2005.

42. As any "claim" of Allen's arose after the statute was amended on August 28, 2005, the City is entitled to a maximum of one million dollars out

² This last sentence of § 105.726.3, RSMo. was amended in 2012. In 2005, as enacted, the last sentence of § 105.726.3, RSMo. read as follows: "Except that the commissioner of administration shall reimburse from the legal expense fund any board of police commissioners established under chapter 84, RSMo, for liability claims otherwise eligible for payment under section 105.711 paid by such boards on an equal share basis per claim up to a maximum of one million dollars per fiscal year."

of the LEF for payment of the Allen Settlement.

43. In addition, § 105.726.5, RSMo. provides:

Claims tendered to the attorney general promptly after the claim was asserted as required by Section 105.716 **and prior to August 28, 2005**, may be investigated, defended, negotiated, or compromised by the attorney general and full payments may be made from the state legal expense fund on behalf of the entities and individuals described in this section as a result of the holding in *Wayman Smith III, et. al. v. State of Missouri*, 152 S.W.3d 275.

§ 105.726.5, RSMo. (emphasis added).

44. Per the statute, in order for claims to be eligible for “full payment” out of the LEF, such claims must have been tendered to the Attorney General **“prior to August 28, 2005.”**

45. As the Allen case was not filed until August 2014, and tendered to the Attorney General thereafter, it was not tendered prior to August 28, 2005 as is required in order to be eligible for full payment out of the LEF.

46. Accordingly, under § 105.726.5, RSMo, the Allen Settlement is not eligible for full payment out of the LEF.

WHEREAS, The State of Missouri seeks a declaratory judgment declaring:

- (a) That the maximum contribution to be paid out of the State Legal Expense Fund toward the Allen Settlement shall be one million dollars; and
- (b) That the State shall have the right to recoup from the City of St. Louis any amount already paid out of the Legal Expense Fund toward the Allen Settlement in excess of one million dollars; and

- (c) Any other rights or obligations of the parties necessary to resolve the dispute at issue and/or any other relief that the Court deems just and proper.

Dated: February 9, 2018

Respectfully submitted,

JOSHUA D. HAWLEY
Attorney General

/s/ Ryan L. Bangert
RYAN L. BANGERT
Deputy Attorney General for Civil
Litigation
Mo. Bar No. 69644
207 W. High Street
P.O. Box 899
Jefferson City, MO 65102
Phone: (573) 751-8828
ryan.bangert@ago.mo.gov

Attorney for Plaintiff/Relator