

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

*** FILED ***
10/17/2002

10/09/2002

CLERK OF THE COURT
FORM V000A

JUDGE PRO TEM TERRY PILLINGER
FOR HONORABLE ROBERT D. MYERS

N. Greene
Deputy

CV 2002-001133

FILED: _____

RONALD L SPRAGUE, et al.

G LYNN SHUMWAY

v.

SHENANDOAH L RANDALL, et al.

RON W COLLETT

FRANK B JANCAROLE
SCOTT A ALLES
DOCKET-CIVIL-CCC

8:55 a.m. This is the time set for a Comprehensive Pretrial Conference. Plaintiff is represented by counsel, G. Lynn Shumway. Defendant, Shenandoah L. Randall and State Farm Insurance are represented by counsel, Ron W. Collett. Defendants Desierto Verde, Inc. and Lavern E. Latham are represented by counsel, Scott A. Alles.

A record of the proceedings is made by CD/videotape in lieu of a court reporter.

Mr. Alles presents the Court with a Motion for Order of Withdrawal and Substitution of Counsel for Defendants Lavern E. Latham and Desierto Verde.

IT IS ORDERED that the Clerk of Court Docket Department substitute Scott A. Alles for Frank B. Jancarole as the attorney of record for Defendants Lavern E. Latham and Desierto Verde, all in accordance with the Formal Written Order signed by the

10/09/2002

CLERK OF THE COURT
FORM V000A

JUDGE PRO TEM TERRY PILLINGER
FOR HONORABLE ROBERT D. MYERS

N. Greene
Deputy

CV 2002-001133

Court on October 9, 2002 and filed (entered) by the Clerk on
October 9, 2002.

The parties having stipulated to an independent group of
arbitrators,

IT IS ORDERED that within 120 days from this date all
parties shall conduct mediation with Mr. and Mrs. Sprague and
report back to the Court in writing and by telephone regarding
any resolution.

IT IS ORDERED adopting by reference, as an order of the
Court, the Joint Comprehensive Pretrial Conference Memorandum.
The terms of the Memorandum shall govern, unless inconsistent
with any provisions of this minute entry.

IT IS ORDERED AS FOLLOWS:

I. **SETTING A FIRM JURY TRIAL** in this matter for:

Tuesday, May 27, 2003 at 9:30 a.m.

TIME LIMIT: 5 DAYS

BEFORE:

**Honorable ROBERT D. MYERS
SUPERIOR COURT OF ARIZONA
EAST COURT BUILDING
101 WEST JEFFERSON
COURTROOM 414 - 4TH FLOOR
PHOENIX, AZ 85003**

II. **DISCLOSURE OF DISCOVERY AND MOTIONS**

A. **RULE 26.1**

10/09/2002

CLERK OF THE COURT
FORM V000A

JUDGE PRO TEM TERRY PILLINGER
FOR HONORABLE ROBERT D. MYERS

N. Greene
Deputy

CV 2002-001133

1. Plaintiff shall disclose all expert witnesses and all of the information required by Rule 26.1(a)(6), Arizona Rules of Civil Procedure ("A.R.C.P."), by 5:00 p.m. on December 9, 2002.
2. Defendant shall disclose all expert witnesses and all of the information required by Rule 26.1(a)(6), A.R.C.P., on or before February 6, 2003.
3. The parties shall exchange simultaneous supplemental non-expert disclosure statements by 5:00 p.m. on February 6, 2003. No information disclosed after that date may be used at trial, absent court order on motion and affidavit.

B. **Expert Disclosure**

All experts and their opinions shall be disclosed no later than **30 days before the discovery completion date** in order to allow sufficient time for any rebuttal opinions to be disclosed and the deposition of experts to be completed.

Opinions of experts not disclosed or which are fairly sought and revealed in deposition or other discovery shall not be supplemented at trial. Material facts and exhibits not fairly disclosed in disclosure statements or timely supplements or revealed in deposition or other discovery shall not be supplemented or utilized at trial.

C. **Pretrial Motions**

10/09/2002

CLERK OF THE COURT
FORM V000A

JUDGE PRO TEM TERRY PILLINGER
FOR HONORABLE ROBERT D. MYERS

N. Greene
Deputy

CV 2002-001133

All pretrial motions, other than motions *in limine* as discussed below, shall be filed no later than 60 days before trial.

Any party filing a Motion for Summary Judgment or any other motion shall comply with the following practice:

1. The moving party shall not file a copy of any statement of facts or memorandum with the Court but shall serve the other parties.
2. Any response or statement of facts or reply shall not be filed with the Court, but shall be served upon the other parties.
3. When all the motion papers (Motion, Response and Reply and any statements of fact and/or disputed statements of fact) are filed, the **moving party** shall place them in a loose-leaf notebook for delivery to this division. Each memorandum/statement of facts shall be tabbed for ease of reading and handling. Each submission shall be tabbed and identified and have an index. Any motions to strike any part of any motions shall be filed separately from the original motion.
4. No more than two significant issues shall be addressed in any single motion.
5. The Court would prefer that each motion, response, statement of facts, etc. also be submitted by hyperlinked CD ROM. Either side to a motion may submit a hyperlinked brief even if the other side does not do so.

10/09/2002

CLERK OF THE COURT
FORM V000A

JUDGE PRO TEM TERRY PILLINGER
FOR HONORABLE ROBERT D. MYERS

N. Greene
Deputy

CV 2002-001133

6. When each notebook is received with **complete** briefings, the Court will consider setting oral argument, if requested.
7. No moving party shall file "cross motions." Each motion filed by any party shall be independent of any other motion. Each "response" to a motion shall be just that - a presentation of the reasons why the motion should be denied.
8. Any party who "joins" another party's motion shall collaborate with the original moving party in inserting the joinder in the original moving party's notebook and adding the information to the index. If new facts or authorities are added to the "joinder," it shall be treated as a separate motion in all respects.
9. Each response or reply shall be captioned precisely as the motion is captioned.
10. No extensions of time for responses or replies shall be permitted except upon stipulation and **order of the court**. If a stipulation is refused by any party, that party may file a motion for extension of time.

D. **Discovery Cutoff**

All discovery shall be completed no later than March 28, 2003. "Completed" means "propounded and answered" and does not mean "just initiated." Therefore, "written discovery requests must be propounded sufficiently in advance of the discovery completion date to afford the party to whom they are directed the time for response prescribed by the Rules and to insure that the

10/09/2002

CLERK OF THE COURT
FORM V000A

JUDGE PRO TEM TERRY PILLINGER
FOR HONORABLE ROBERT D. MYERS

N. Greene
Deputy

CV 2002-001133

responses are due prior to the date for the completion of discovery." **See** State Bar Note, 2000 Amendment. Counsel by letter agreement may extend the discovery cut-off date, but any discovery dispute arising after the date set by the Court will not be grounds for continuance of the trial.

III. PRETRIAL MANAGEMENT CONFERENCE

Pretrial Management Conference (PTMC) is set on **May 12, 2003 at 9:15 a.m.** in this Division.

TIME ALLOTTED: 30 minutes

Should the parties have any objections to the depositions, the parties shall exchange any objections 15 days prior to the PTMC. Arguments to the objections shall be heard at the PTMC.

At the PTMC, Counsel shall be prepared to discuss:

- A. Time limits in *voir dire*, opening statements, examination of witnesses and closing arguments.

Pursuant to Rule 611(a), Arizona Rules of Evidence, the following presumptive maximum time limits will be enforced during the trial:

- Mini-opening statements: 3 minutes each party
- Lawyer voir dire: 15 minutes each party
- Opening statements: 30 minutes each party
- Witnesses:
 - Direct examination: 60 minutes

10/09/2002

CLERK OF THE COURT
FORM V000A

JUDGE PRO TEM TERRY PILLINGER
FOR HONORABLE ROBERT D. MYERS

N. Greene
Deputy

CV 2002-001133

Cross examination 40 minutes

Redirect examination: 15 minutes

- Closing arguments: 45 minutes each party
- Good cause must be shown for extensions

- B. Stipulations for the foundation and authenticity of exhibits.
- C. Jury instructions (preliminary and final), juror notebooks (Counsel shall bring any proposed jury notebooks to the Conference), mini-opening statements, *voir dire* and forms of verdict.
- D. Agreed-upon deposition summaries and excerpts from deposition transcripts and the editing of videotaped depositions.
- E. Use of "short trial" or summary jury trial.
- F. Any special scheduling or equipment issues.
- G. Status of settlement of the case.

COUNSEL WHO WILL BE THE TRIAL LAWYERS ON THE CASE ARE REQUIRED TO ATTEND THE PRETRIAL MANAGEMENT CONFERENCE.

FAILURE OF TRIAL COUNSEL TO ATTEND THE PRETRIAL MANAGEMENT CONFERENCE MAY RESULT IN PERSONAL SANCTIONS.

IV. JOINT PRETRIAL STATEMENT

The Joint Pretrial Statement (JPTS) in accordance with Rule 16(d), A.R.C.P., is due in this Division by 5:00 p.m., five (5) judicial days before the PTMC (or trial, if no PTMC is set).

10/09/2002

CLERK OF THE COURT
FORM V000A

JUDGE PRO TEM TERRY PILLINGER
FOR HONORABLE ROBERT D. MYERS

N. Greene
Deputy

CV 2002-001133

In addition to the information required by A.R.C.P. Rule 16(d), Counsel shall identify in/with the JPTS all deposition or other transcribed testimony that may be offered at trial. The proposed testimony is to be identified by reference to page and line numbers. Objections to such testimony, if any, and the reasons for such objections, shall also be indicated.

Along with the JPTS, Counsel shall deliver copies of the following to this Division:

- A. Proposed *voir dire* questions.
- B. A joint set of agreed-upon Preliminary and Final Jury Instructions.

Before to the due date for the proposed jury instructions, counsel shall **personally** consult for the purpose of preparing and submitting a joint set of agreed-upon preliminary and final jury instructions and clean copies of them. Counsel are requested to submit a copy of the jury instruction requests on an IBM-compatible, double sided, high-density 3.5 diskette in Microsoft Word 97 **and a clean copy of each requested instruction.** If counsel request any of the Recommended Arizona Jury Instructions, counsel should submit the instruction by designating the RAJI requested along with a clean copy of the instructions.

Non- RAJI instructions should be typed, each on a separate page with a heading (i.e.: Plaintiff's Instruction No. 2 etc.), and provide authority for the instruction. Please number each instruction consecutively, rather than leaving a blank space for someone else (such as the Court)

10/09/2002

CLERK OF THE COURT
FORM V000A

JUDGE PRO TEM TERRY PILLINGER
FOR HONORABLE ROBERT D. MYERS

N. Greene
Deputy

CV 2002-001133

to number. Counsel should also submit a clean copy of each non-RAJI instruction.

The Court will not start the trial if counsel have not submitted a comprehensive set of jury instructions as indicated above.

- C. Separate sets of requested instructions that have not been agreed upon in the form indicated in paragraph B, above. Please read *Rosen v. Knaub*, 175 Ariz. 329, 857 P.2d 381 (1993), and the RAJI Civil 3d Statement of Purpose and Approach before preparing the request for non-RAJI instructions.
- D. Proposed Findings of Fact and Conclusions of Law, if a request has been or will be filed. If no proposed Findings of Fact and Conclusions of Law are received, the request shall be deemed waived. No more than 5 pages will be considered and each issue shall be in a separate numbered paragraph.
- E. A jointly-completed time and witness estimate form (attached). The Court will use the form to predict the length of the trial for the jurors and to direct Counsel to follow the trial time limits established pursuant to paragraph III, B, above.
- F. In jury trial cases the parties shall jointly prepare a brief summary of the case which the Court will read to the jury at the commencement of *voir dire*.

V. **MOTIONS IN LIMINE**

Any motions *in limine* shall be filed thirty (30) days before the PTMC (or trial, if no PTMC is set) and such

10/09/2002

CLERK OF THE COURT
FORM V000A

JUDGE PRO TEM TERRY PILLINGER
FOR HONORABLE ROBERT D. MYERS

N. Greene
Deputy

CV 2002-001133

motions must meet the test of *State v. Superior Court*, 108 Ariz. 396, 397, 499 P.2d 152 (1972): "The primary purpose of a motion *in limine* is to avoid disclosing to the jury prejudicial matters which may compel a mistrial." See also, Ariz. Rules of Evidence, Rule 103(c). A written response to a motion *in limine* may be filed no later than ten (10) days thereafter. The Court will rule on the motions *in limine* without oral argument. No motions will be considered outside of those filing limits. No replies shall be filed. Each motion shall be limited to one issue and no more than 5 such motions per side will be considered by the Court.

VI. **MARKING EXHIBITS**

At least five (5) judicial days before the trial, the trial lawyers, or their knowledgeable assistants, shall appear in this Division to present all exhibits. The exhibits will be marked serially as they are listed in the LIST OF EXHIBITS - Plaintiff's first, Defendant's second, which will be prepared by counsel and saved onto an IBM compatible 3.5 diskette in Microsoft Word 97 and given to the Clerk with the exhibits. The parties shall advise the Clerk, referring specifically to the pretrial statement, which exhibits may be marked directly in evidence. All exhibits will be clearly labeled by Counsel to correspond with the list provided. Counsel are directed to meet in person to exchange the exhibits before coming to court. **Counsel will make sure that they do not bring to the clerk a set of exhibits that include duplicate exhibits.** Counsel should not reserve exhibit numbers for "all Defendant's exhibits," "all Plaintiff's exhibits," "miscellaneous demonstrative exhibits," and the like. Counsel shall

10/09/2002

CLERK OF THE COURT
FORM V000A

JUDGE PRO TEM TERRY PILLINGER
FOR HONORABLE ROBERT D. MYERS

N. Greene
Deputy

CV 2002-001133

also present original depositions for filing at that time.

VII. **SETTLEMENT**

If the case is set for a jury trial, one day's jury fees will be assessed unless the Court is notified of settlement before 2:00 p.m. on the judicial day before trial.

If the parties wish a Settlement Conference under Rule 16.1, A.R.C.P., they are to file a request with the Court whereupon a Judge Pro Tem will be appointed by the Alternate Dispute Resolution Office ("ADRO"). Alternatively, the parties are encouraged to hire their own mediator to conduct a conference at a time and place convenient to the parties.

ATTACHED FOR MAILING: Witness Information Form.

This proceeding will take place in the Superior Court's new "e-courtroom." A record of the proceedings may be made by CD/videotape in lieu of a court reporter. Should you want an unofficial copy of the proceedings, the parties or Counsel may give the Court an unopened VHS videotape or unopened recordable compact disc at least fifteen (15) minutes before the hearing/trial and a copy will be made at no cost. A specific type of videotape must be used for this system in order to ensure the most reliable record: Maxell or Fuji Super HG 120 (VHS) (SNG T-120) or equivalent.

If the proceedings last for more than one day, a new tape must be provided for each day. For the convenience of the parties, the gift shop in the courthouse cafeteria sells the appropriate videotape.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

*** FILED ***
10/17/2002

10/09/2002

CLERK OF THE COURT
FORM V000A

JUDGE PRO TEM TERRY PILLINGER
FOR HONORABLE ROBERT D. MYERS

N. Greene
Deputy

CV 2002-001133

Should an official transcript be required, you may request that the Court prepare it. The party ordering the transcript must pay for it. With this new technology, a court reporter is likely not required and the parties are encouraged to experience the Court's video recording system before requesting a court reporter.

If a court reporter is required, the Court must receive a written request at least 48 hours before the commencement of the proceeding. Failure to timely request a court reporter will be deemed consent to proceed without a court reporter.

10/09/2002

CLERK OF THE COURT
 FORM V000A

JUDGE PRO TEM TERRY PILLINGER
 FOR HONORABLE ROBERT D. MYERS

N. Greene
 Deputy

CV 2002-001133

WITNESSES FOR PLAINTIFF(S)

	WITNESS NAME	DIRECT	CROSS
1			
2			
3			
4			
5			
6			

DIRECT & CROSS

TOTAL: _____

WITNESSES FOR DEFENDANT(S)

	WITNESS NAME	DIRECT	CROSS
1			
2			
3			
4			
5			
6			

DIRECT & CROSS

TOTAL: _____

TOTAL WITNESS TIME ESTIMATE: _____

TIME ESTIMATE FOR:	PLAINTIFF		DEFENDANT
OPENING STATEMENT			
CLOSING ARGUMENT	1 st :	2 nd :	

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

*** FILED ***
10/17/2002

10/09/2002

CLERK OF THE COURT
FORM V000A

JUDGE PRO TEM TERRY PILLINGER
FOR HONORABLE ROBERT D. MYERS

N. Greene
Deputy

CV 2002-001133