

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2001-008401

09/10/2004

HONORABLE J. RICHARD GAMA

CLERK OF THE COURT
S. Brown
Deputy

FILED: 09/20/2004

MARICOPA COUNTY FLOOD CONTROL
DISTRICT

KATHLEEN A PATTERSON

v.

LARRY ROVEY FARMS, et al.

DALE S ZEITLIN

JEAN WEAVER RICE

TRIAL SETTING
TRIAL MANAGEMENT CONFERENCE SETTING

3:30 p.m. This is the time set for pretrial status conference and pending motions. Plaintiff is represented by counsel, Kathleen A. Patterson. Defendant Larry Rovey Farms is represented by counsel, Dale S. Zeitlin.

Court reporter, Michele Sink, is present.

Status of depositions and discovery discussed.

Argument is heard on Plaintiff's Motion in Limine Re: Plaintiff's Objections to Defendant's Multiple Expert Opinions of Value.

The Court having reviewed Plaintiff's motion in limine, the response and reply and having heard arguments of counsel,

IT IS ORDERED denying Plaintiff's motion in limine.

Argument is heard on Plaintiff's Second Motion in Limine re: Sanctions for Defendant's Late Disclosure of a New Appraisal; and Motion to Extend FCD'S Disclosure/Discovery Deadlines.

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The Court having reviewed Plaintiff's Second Motion in Limine, the response and the reply and having heard the arguments of counsel,

IT IS ORDERED denying the motion.

Court and counsel discuss discovery disputes.

IT IS ORDERED Plaintiff is permitted 1 additional hour to depose Peter Martori by November 10, 2004.

IT IS FURTHER ORDERED all depositions currently scheduled may proceed.

IT IS HEREBY ORDERED as follows:

1. **TRIAL**

This matter is set for trial to a jury on **November 30, 2004 at 9:30 a.m.** in this division.

TIME ALLOTTED: 5 DAYS

HONORABLE J. RICHARD GAMA
ARIZONA SUPERIOR COURT
MARICOPA COUNTY
EAST COURT BUILDING
101 WEST JEFFERSON
6TH FLOOR, COURTROOM 611
PHOENIX AZ 85003
602-506-1245

THIS IS A FIRM TRIAL SETTING

Trial days and hours are as follows: Monday through Thursday from 9:30 a.m. to 4:30 p.m. daily. The Court will take two 15-minute recesses, one in the morning and one in the afternoon. The lunch recess will be from 12:00 p.m. to 1:30 p.m.

2. **CLOSURE OF DISCOVERY AND MOTIONS**

A. **EXPERT OPINIONS/RULE 26.1 DISCLOSURE SUPPLEMENTS**

Counsel are hereby advised that the Court will not allow expert opinions to be admitted at the time of trial which have not been fairly disclosed prior to trial. Pursuant to Rule 26.1, counsel are directed to supplement all opinions in a timely manner.

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B. SUBSTANTIVE MOTIONS

All substantive motions, including Rule 56 Motions shall be filed no later than **90 days prior to trial** (motions due: **closed**).

C. DISCOVERY CUTOFF

All discovery shall be completed no later than **60 days prior to trial** (discovery cutoff: **closed**). Any discovery done after the discovery cutoff date, whether on stipulation or not, shall not be used at trial unless the Court enters a written Order permitting such discovery.

D. MARKING EXHIBITS FOR TRIAL

Trial counsel are directed to personally meet ten days prior to trial to discuss the exhibits prior to marking them for trial. Counsel shall attempt to agree on authenticity, foundation and admission of the exhibits to shorten the time spent on exhibits during the trial. Counsel shall contact the courtroom clerk at 602-506-8593 and present all exhibits to be used at trial, no later than **7 days prior to trial date** (exhibits due: **November 23, 2004**).

Counsel shall present all exhibits with a list of exhibit descriptions on a diskette in Word format, to the clerk at the time scheduled by the clerk. The exhibits will be marked serially as they are listed in the Pretrial Statement -- Plaintiff's first, Defendant's second. Counsel will make sure that they do not bring to the clerk a Plaintiff's set of exhibits and a Defendant's set of exhibits that include duplicate exhibits. Counsel should note that depositions are not marked as exhibits. Counsel shall present original depositions for filing at the same time that exhibits are presented.

E. JUROR NOTEBOOKS

The Court encourages the use of tabbed indexed juror notebooks in almost all cases. Stipulating the contents into evidence is necessary. Key exhibits should be included. Curriculum vitae, diagrams, photographs, timelines, non-argumentative summaries of positions on liability and damages and other information helpful to the jurors may be included. Any objections to the proposed contents will be ruled on at the Trial Management Conference.

F. DEPOSITIONS

To the extent reasonably possible, depositions should be summarized.

Narrative summaries with brief excerpts of deposition question and answer testimony are preferred at trial rather than the reading of many pages of testimony.

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Videotape depositions shall be edited.

G. JURY SELECTION

The Court uses the "struck" method for jury selection.

Counsel will be permitted to conduct their own voir dire after the Court's examination.

Counsel should be prepared to read a list of witnesses they intend to call during the trial.

3. TRIAL MANAGEMENT CONFERENCE

A Trial Management Conference is set on **November 10, 2004 at 3:00 p.m. (Time allotted: 2 hours)** in this division.

At the Trial Management Conference counsel shall be prepared to discuss:

- A. Proposed length of counsel's voir dire, opening statements, examination of witnesses and closing arguments.
- 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 and voir dire.
- 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.

Counsel will meet at least **5 days prior** to Trial Management Conference to complete the Witness Information Form which is attached to this minute entry (due date: **November 5, 2004**). Counsel will each list the witnesses that each side will call and estimate the time required for direct examination of witnesses and cross-examination of opposing witnesses. In addition, counsel will estimate the time required for opening statements and closing arguments. The form must be brought to the Court at the Trial Management Conference. The Court will use the Witness Information Form to predict the length of the trial for the jurors and to direct counsel to follow the time limits estimated.

Attachment: Witness Information Form.

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Counsel who will be the trial lawyer on the case are required to attend the Trial Management Conference.

Failure of trial counsel to attend the Trial management Conference may result in sanctions.

4. FINAL JOINT PRETRIAL STATEMENT

The parties shall exchange and attach to the Final Joint Pretrial Statement a comprehensive outline of each expert's separate opinion and a detailed/exhaustive description of the factual/substantive basis for each such opinion.

The Final Joint Pretrial Statement in accordance with Rule 16(d), A.R.Civ.P., is due in this division by **5:00 p.m. five days prior** to the Trial Management Conference (Statement due: **November 3, 2004**).

In addition to the information required by A.R.Civ.P. Rule 16(d), counsel are to identify in the Joint Pretrial Statement all depositions 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, if any, to such testimony and the reason for such objections are also to be set forth therein.

Also attached to the Joint Pretrial Statement counsel shall deliver to this division copies of the following:

A: Proposed voir dire questions.

B. Joint set of agreed-upon preliminary, standard and final jury instructions on a diskette in Word format.

C. Separate sets of requested instructions that have not been agreed upon on a diskette in Word format. 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.

Counsel are instructed to set forth with specificity objections to opposing counsel's jury instructions and cite specific authority to that matter.

D. Proposed Findings of Fact and Conclusions of Law if this is to be a bench trial and a request has been or will be filed. If no proposed Findings of Fact and Conclusions of Law is received, the request shall be deemed waived.

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E. Jointly-Completed Witness Information Form: The Court will use the Witness Information Form to predict the length of the trial for the jurors.

F. 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. The statement shall briefly set forth the facts of the case and it should specify the claims and the defenses.

G. Any trial memoranda (optional) which the parties wish to submit should accompany the Final Joint Pretrial Statement.

H. As previously stated, a **comprehensive outline** of each **expert's separate opinions** and a detailed/exhaustive description of the factual/substantive basis for each such opinion. If there are any issues regarding expert opinions, those issues shall be raised in motions *in limine* or Rule 56 motions and shall be addressed at the Trial Management Conference.

5. **MOTIONS IN LIMINE**

Any and all motions *in limine* shall be filed no later than **30 days prior to Trial Management Conference** (motions due: **October 11, 2004**). Such 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). Written responses to motions *in limine* shall be filed and hand-delivered to opposing counsel and this Court no later than **October 21, 2004 (20 days prior to TMC)**, and replies shall be filed and hand-delivered to opposing counsel and this Court no later than **October 26, 2004 (15 days prior to TMC)**. The Court will hear oral argument on all motions *in limine* during the Trial Management Conference set on *. Any motion *in limine* not timely filed will be deemed waived.

6. **WITNESS AND EXHIBIT LISTS**

The witness and exhibit lists shall contain no surprises; any information sought by other discovery devices and revealed for the first time on the witness or exhibit lists will be inadmissible at trial.

7. **EXHIBITS FOR THE TRIAL MANAGEMENT CONFERENCE**

Except illustrative exhibits made during trial, all exhibits are to be exchanged **30 days prior** to the Trial Management Conference. At least one calendar day prior to the Trial Management Conference, each side shall have numbered its exhibits and provided a coordinating list of the exhibits to each attorney, the Court, and the courtroom clerk, so that the Court can hear and rule on all objections at the Trial Management Conference. These numbers will not

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necessarily be the numbers used on the exhibit tags at trial, but will be referenced at the Trial Management Conference for discussion and rulings and clarity of the record. Each side may begin with number 1, but the numbers shall be preceded by a "P" for Plaintiff or "D" for Defendant. Written stipulations to admit specified exhibits into evidence are encouraged.

IT IS FURTHER ORDERED continuing this matter on the inactive calendar through and including November 30, 2004.

4:15 p.m. Matter concludes.

KEY DATES TO CALENDAR

• TRIAL DATE	11/30/2004
• TRIAL MANAGEMENT CONFERENCE	11/10/2004
• JOINT PRETRIAL STATEMENT DELIVERED (5 days prior to Trial Management Conference with attachments) <ul style="list-style-type: none">• Voir Dire inquiry;• Preliminary, Standard, and Final Jury Instructions;• Comprehensive outline of each experts' separate opinions and the basis for each such opinion• Witness Information Form	11/3/2004
• MOTIONS <i>IN LIMINE</i> DELIVERED (30 days prior to Trial Management Conference)	10/11/2004
• SUBSTANTIVE MOTIONS DELIVERED (90 days prior to Trial) <ul style="list-style-type: none">• Including Rule 56 Motions	Closed
• CUTOFF DATE FOR DISCOVERY AND DISCLOSURE (60 days prior to Trial)	Closed
• TRIAL EXHIBITS DELIVERED (7 days prior to Trial)	11/23/2004

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WITNESS INFORMATION FORM

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: _____

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TOTAL WITNESS TIME ESTIMATE: _____

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