

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2015-007800

08/24/2015

HONORABLE DAVID B. GASS

CLERK OF THE COURT  
L. Stogsdill  
Deputy

STEVEN WIETRZNY, et al.

DOUGLAS G SHOOK

v.

AMERICAN STRATEGIC INSURANCE  
CORPORATION

CRAIG A MCCARTHY

RULING

The Court has read and considered the following:

- Petitioners' Petition to Disqualify Appraiser and Appoint Umpire (Docket # 1) filed July 10, 2015;
- Respondent's Response in Opposition to Petition to Disqualify Appraiser and Appoint Umpire (Docket # 5) filed August 4, 2015; and
- Respondent's Motion for Accelerated Consideration/Hearing of Ruling on Petition to Disqualify Appraiser and Appoint Umpire (Docket # 6) filed August 4 2015;
- Petitioners' Response to Motion for Accelerated Consideration/Hearing of Ruling on Petition to Disqualify Appraiser and Appoint Umpire (Docket #8) filed August 24, 2015.

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Petitioners filed no reply.

**Discussion**

Petitioners are policy holders with Respondent. Petitioners and Respondent do not agree on the amount of a claim filed by Petitioners. The appraisal provision in the policy that Petitioners have with Respondent was invoked. Respondent appointed Wayne Sowers as a “competent and impartial appraiser.” Petitioners appointed Dennis Liggett as their “competent and impartial appraiser.” Petitioners also are working with an adjuster, David Young.

Petitioners ask this Court to disqualify Wayne Sowers before the appraisal has occurred based on bias. Petitioners allege Wayne Sowers is biased because:

1. Wayne Sowers works for a company that provides adjusting services to insurance companies; and
2. Wayne Sowers has a personal bias against Petitioners’ adjuster, David Young, because of an interaction between David Young and Wayne Sowers’s previous employer.

Respondent has attached to its response, a signed statement from Wayne Sowers that responds to the allegations.

In addition, Petitioners ask this Court to appoint an umpire from a list of three umpires provided by Petitioners. Respondent agreed to the appointment of Steve Scott, a retired judge, who was one of the three umpires proposed by Petitioners.

**Discussion**

Arizona has no authority directly on point. Petitioner has cited no authority to establish that this Court has the ability to disqualify an appraiser before the appraisal process has commenced.

California and other states have considered pre-appraisal disqualifications in the context of its insurance statutes. *See Mahnke v. Superior Court*, 180 Cal. App. 4th 565, 581-82, 103 Cal. Rptr. 3d 197, 208-09 (2009). California’s statute, like the policy at issue here, requires both sides to appoint a “competent and impartial appraiser.” *See id.* However, California’s statutes, unlike Arizona’s statutes, expressly provide for pre-appraisal disqualification. *See id.* Assuming that

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this Court can grant the relief that Petitioner's seek, the Court finds no basis for the disqualification. *See id.*

*Mahnke* framed the issue for pre-appraisal disqualification of an appraiser as follows: "Based on these facts, would a reasonable member of the public fairly entertain a doubt as to Mr. [Somers's] ability to serve impartially as [ASI's] party-selected appraiser?" *See id.* Here, the answer to the question is no, though that answer is without prejudice to Petitioners being able to present evidence of the requisite bias post-appraisal.

As in *Mahnke*, the Court assumes that both Mr. Somers and Mr. Liggett are being compensated, whether by the party that selected them or by their employer. *See id.* The fact of compensation or employment status does not alter an appraiser's ability to serve impartially. *See id.* (citing *Banwait v. Hernandez*, 205 Cal.App.3d 823, 831, 252 Cal. Rptr. 647 (1988)). As *Banwait* explained, "[t]he existence of bias depends on whether one can draw an inference of favoritism not because the arbitrator may receive money but because the arbitrator has a business-connected relationship that may lead him or her to place unusual trust or confidence in one side as opposed to the other." *See id.* (internal quotations omitted). The pleadings do not establish any such business relationship between Respondent and Mr. Somers or Mr. Somers' employer. *See id.*

The Court found no authority that an appraiser should be subject to pre-appraisal (or post-appraisal) disqualification merely because the appraiser was an employee of a company that provides adjusting services for insurers. The Court further found no authority that an appraiser should be subject to pre-appraisal (or post-appraisal) disqualification merely because the appraiser's previous employer was on opposite sides of a matter with the other side's adjuster.

**IT IS THEREFORE ORDERED** denying in part and granting in part Petitioners' Petition to Disqualify Appraiser and Appoint Umpire (Docket # 1) as follows:

- The Court denies without prejudice Petitioners' request to disqualify Wayne Somers as Respondents' appointed appraiser.
- The Court grants Petitioners' request to appoint an umpire and appoints Steve Scott.

**IT IS FURTHER ORDERED** denying both Petitioners' and Respondent's request for attorney fees and costs.