

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2001-011816

01/23/2004

JUDGE PENDLETON GAINES

CLERK OF THE COURT
W. Bobrowski
Deputy

FILED: 01/27/2004

CARTER F MULLEN, et al.

LISA J COUNTERS

v.

PRUDENTIAL PROPERTY & CASUALTY
COMPANY, et al.

CHARLES A STRUBLE

TRIAL VACATED

9:35 a.m. This is the time set for Pretrial Management Conference. Plaintiff Ernie Mullen is present and represented by counsel, Lisa Counters. Defendant Prudential Property & Casualty Company is represented by counsel, Charles Struble.

Court Reporter, Michael Vacca, is present.

Discussion is held regarding Defendant's Motion to Continue Trial.

Plaintiffs having no objection,

IT IS ORDERED granting Defendant's Motion to Continue Trial.

IT IS FURTHER ORDERED vacating today's Pretrial Management Conference and the Trial set on February 9, 2004 at 9:30 a.m. in this division.

The Court declines to reset the Trial date at this time.

IT IS FURTHER ORDERED setting a telephonic Status Conference on **April 19, 2004 at 8:45 a.m.**, at which time the Court will review with counsel the status of Ms. Taegel's husband's heart transplant and if she remains unavailable, the Court will confer with counsel

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2001-011816

01/23/2004

regarding alternate means of presenting her testimony. Counsel for the Plaintiff is to initiate the phone conference (602) 506-3940.

If, at the next Status Conference the case has been reset for Trial, the Court will also reset a Pretrial Management Conference.

There are no further procedural orders in effect at this point.

RULINGS ON MOTIONS

1. Defendant's Motion for Partial Summary Judgment as to Vicarious Liability is granted. There is no submissible jury issue as to application of the factors from Santiago v. Phoenix Newspapers, Inc., 164 Ariz. 505 (1990), which establish that the contractors were independent contractors. Defendant did not delegate its non-delegable duty to act in good faith, and there is no non-delegable duty on its part to repair. There is no factual showing that the work here was "inherently dangerous" so as to establish an exception to the general rule of non-liability of a principal for the acts of an independent agent (contractor).
2. Defendant's Motion in Limine to Exclude Dannemiller Claim File and Testimony of Ralph and Linda Dannemiller is granted. There is an insufficient showing of similarity under Rule 404(b) to warrant admission of evidence pertaining to the prior, disputed claim (only similarities are existence of mold damage; same adjuster; same expert used there and used but rejected here; dissimilarities and remoteness in time are significant; no "notice" of anything other than obvious fact that mold damage produces insurance claim). Even if the evidence were arguably relevant under Rule 404(b), which the Court finds it is not, dangers of undue prejudice, wasted time and distraction of the jury outweigh the probative value of the offered evidence under Rule 403.

Evidence that Rueckert recommendations were followed by Prudential in another instance but not here is admissible.

3. Defendant's Motion in Limine to Preclude Use of Request for Appraisal as Evidence of Bad Faith is denied. The admissibility of the evidence is conceded. Counsel may argue the evidence and reasonable inferences.
4. Defendant's Motion in Limine Re: Quantitative EEG Testing is granted without opposition.

9:40 a.m. Conference concludes.