

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2001-009143

03/15/2004

HONORABLE ROBERT L. GOTTSFIELD

CLERK OF THE COURT
J. Pinter
Deputy

FILED: 03/17/2004

TIM R MOMAN, et al.

CHARLES J SURRENO III

v.

MARK J HANNEKEN, et al.

KURT M ZITZER

MINUTE ENTRY

9:30 a.m. IN CHAMBERS: This is the time set for oral argument on Auto Owner's Motion to Compel Access to Moman's Residence to do an appraisal and for an in camera inspection of documents held by Hanneken's counsel. There is a bad faith lawsuit with a Morris Agreement. The above noted counsel are present telephonically.

Court Reporter Lorraine Chalkey is present.

Auto Owner's claims that the specific documents it needs from defendant/counter-claimant Hanneken's counsel (Charles J. Surreno) is on the issue of reasonableness under the Morris Agreement (between Hanneken and Moman), which reasonableness hearing is now set for May 24, 2004. Auto Owners claims that the fair market value of the Moman residence is important because the insured (the claimant) must prove the extent to which any settlement amount is reasonable. Under Himes (205 Ariz. 31), this means "what a reasonable person in the insured's position would have settled for under claimant's case." Hanneken is a residential home builder, and the Momans bought one of his homes and instituted suit against Hanneken for construction defects, wherein Auto Owners is Hanneken's insurer. Auto Owners also wants the court to appoint a discovery master to go through Mr. Surreno's file on an in camera basis on the assumption that Hanneken will file a privilege log.

After argument,

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2001-009143

03/15/2004

IT IS ORDERED as follows:

1. A stipulation continuing the issue of an in camera inspection of documents in Hanneken's counsel's file, as this matter may be resolved. If it is not resolved, Auto Owners need merely request another hearing by telephone without filing another document.
2. Allowing both Hanneken and Moman to do a fair market appraisal of the Moman residence.

9:40 a.m. Matter concludes.