

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2003-011582

03/29/2004

HON. JONATHAN H. SCHWARTZ

CLERK OF THE COURT
W. Bobrowski
Deputy

FILED: 04/01/2004

ST BARTHELEMY GROUP L L C

JOSEPH C DOLAN

v.

KEMPER INSURANCE COMPANY, et al.

WILLIAM M DEMLONG

ORAL ARGUMENT HELD

1:34 p.m. This is the time set for Oral Argument on Plaintiff's Motion for Partial Summary Judgment and Defendants' Cross Motion for Summary Judgment. Plaintiff is represented by counsel, Joseph Dolan. Defendants are represented by counsel, William Demlong and Christie Kriegsfeld.

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

Arguments are heard.

IT IS ORDERED denying Plaintiff's motion for partial summary judgment re: appraisability of damage issues and granting Defendants' cross motion.

The language of the insurance policy requires an appraisal process when there is a dispute over the "amount of loss". This Court determines that the current dispute between the respondent insurer and the petitioner insured involves the insurer's position that the electrical event (accident) that occurred damaged only the compressor of the air conditioning system and not the entire system. Arizona Refrigeration Service through Jim Schoenman indicated that the air conditioning system had deteriorated due to wear and tear and age. The respondent's position does not appear to have been made up to avoid the appraisal process. The appraisers would have to determine causation. Therefore the appraisers would be doing more than the parties contracted for in the insurance policy.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2003-011582

03/29/2004

IT IS FURTHER ORDERED that this case will be dismissed on **April 30, 2004**, unless the petitioner files an amended complaint (respondent does not object to the amended complaint) to convert this petition for appraisal into a declaratory judgment action against the insurer.

2:59 p.m. Hearing concludes.