

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2003-011742

04/19/2004

HON. JONATHAN H. SCHWARTZ

CLERK OF THE COURT
A. Gonzalez
Deputy

FILED: 04/28/2004

ROBERT DUNN, et al.

DANIEL B TREON

v.

AMERICAN FAMILY INSURANCE
COMPANY

LYNN M ALLEN

STEPHEN E SILVERMAN

ORAL ARGUMENT

11:06 a.m. This is the time for oral argument re Defendant's Motion for Attorney Fees and Plaintiffs' Motion for Relief. Plaintiffs appear through counsel Daniel Treon and Stephen Silverman. Defendant appears through counsel Lynn Allen.

Proceedings are digitally recorded via compact disc and videocassette in lieu of a court reporter.

Arguments re Defendant's Motion for Attorney Fees are presented.

Arguments are presented re Plaintiffs' Motion for Relief.

IT IS ORDERED denying the Plaintiffs' Motion for Relief from the Court's November 21, 2003 Order. The information contained in the April 4, 2000 letter from American Family to the plaintiffs, as well as the telephone conversation notes submitted as newly discovered evidence by the Plaintiffs, do not justify changing the Court's ruling on Defendant's Motion for New Trial.

Defendant has consistently asserted that some of Plaintiffs' claims are not covered. The information in the letter and the telephone notes do not change the defendant's basic position that all of Plaintiffs' claims were not covered. The more appropriate forum for the actual litigation of coverage issues including whether Plaintiff may have waived specific coverage points is in the Declaratory Judgment action.

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IT IS ORDERED denying Defendant's Motion for Attorneys Fees. This Court has previously described the decision on whether to affirm the appraisal award and issue judgment as a very close matter. It is somewhat difficult to follow the correspondence between Defendant and Plaintiffs as to specific areas of coverage that Defendant was reserving. Therefore, the Court finds that Plaintiffs could have felt justified in seeking to confirm the appraisal award and to obtain judgment. Although Defendant ultimately prevailed, their success certainly was not obvious. The Court is not aware that the Plaintiffs are wealthy individuals. The Court accepts the fact that American Family paid the plaintiff \$116,000; however, that money was for the repair of damages concerning the plaintiffs' home. The burden of bearing the attorneys' fees of \$10,369. falls upon Defendant; however, Defendant is capable of bearing that financial burden.

11:38 a.m. Matter concludes.