

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2008-011414

06/02/2009

HON. JOHN REA

CLERK OF THE COURT  
L. Gilbert  
Deputy

FISHER FINANCIAL GROUP  
INCORPORATED

STEPHEN A U'REN

v.

LOGAN REAL ESTATE APPRAISAL SERVICE    BRADLEY R JARDINE  
L L C, et al.

MINUTE ENTRY

The Court has considered Plaintiff's Motion for Sanctions Pursuant to Rule 37(d), Defendant's Response, and Plaintiff's Reply.

IT IS ORDERED denying Plaintiff's Motion for Sanctions.

First, the Court finds that ARCP 26(g) does not apply to Plaintiff's Motion. However, the application of Civil Rules 26.1(a)(6) and 26(b)(4) to the undisputed facts support the Defendant's position. Mr. Sell was disclosed as a trial witness on a specific matter and his report on that matter was disclosed. Defendant chose not to disclose Mr. Sell as a trial witness on any other issue. Rule 26(b)(4) expressly applies to discovery of a consulting expert's materials and opinions. *Emergency Care Dynamics Ltd. v. Superior Court*, 188 Ariz. 32 (App. 1997), recognizes that the same expert can be both a trial witness and a consultant. For the purposes of Rule 26.1(a)(6), it is the party's disclosure of the expert as a witness that governs, not a parsing of the language of the expert's engagement agreement. Rule 26.1(f) does not apply because there was no duty to disclose and no withholding of discovery. Rule 26.1(a)(5) does not apply to

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disclosure of consulting experts' reports. Such a reading of the rule would conflict with Rule 26(b)(4).

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