

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2010-003357

10/03/2011

HONORABLE MICHAEL J. HERROD

CLERK OF THE COURT  
M. Sahli  
Deputy

ANGELA OJILE

ROBERT D RYAN

v.

WESTERN AGRICULTURAL INSURANCE  
COMPANY

MICHAEL J O'CONNOR

MINUTE ENTRY

9:28 a.m. This is the time set for Oral Argument re Plaintiff's Motion to Compel Production of Documents and Compliance with Subpoena. Plaintiff is represented by counsel, Robert Ryan. Defendant is represented by counsel, Russell Rea.

Court reporter, Helene Paustian is present.

Argument is presented to the Court.

**IT IS ORDERED** taking the matter under advisement.

9:43 a.m. Matter concludes.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2010-003357

10/03/2011

**LATER:**

The Court having taken under advisement Plaintiff's Motion to Compel Production of Documents and Compliance with Subpoena, and having heard oral argument, the Court finds as follows:

Plaintiff seeks two things, (1) disclosure of reserve information by the insurer for this claim, and (2) disclosure of communications between the insurer and appraiser, Tyler Brett.

On the first issue, Defendant argues that the reserve account information has no bearing on the dispute and would have a chilling effect on insurers in evaluating and setting reserves on claims. Plaintiff argues that in a bad faith claim, the information is relevant to determining the state of mind of the insurance company.

There appears to be no Arizona law on the issue of discovery of reserve account information in bad faith cases, and the law from other jurisdictions is split.

The Court finds that the reserve information is relevant to the issue of bad faith, and is discoverable as reasonably leading to admissible evidence, although it may not be admissible evidence. This is especially true given the large differences between the offers made by Defendant on the claim, and the ultimate appraisals on the claim.

On the second issue, Defendant argues that the communications with the appraiser are not discoverable, and are subject to judicial privilege. The Defendant also argues that there is no dispute as to the sufficiency of the award, and that the Court has already approved the appraisal award at Plaintiff's request.

The Court finds that the communications by the insurance company with the appraiser may be discoverable, but that it is more appropriate for the Court to review the communications *in camera* before ordering or not ordering disclosure.

**IT IS ORDERED** that the Defendant, Western Agricultural Insurance Company, shall disclose the reserve information to Plaintiff.

**IT IS FURTHER ORDERED** that the Defendant, Western Agricultural Insurance Company, shall provide copies of all communication concerning this claim between it, its adjusters, agents and employees and appraiser, Tyler Brett, to the Court for an *in camera* inspection on or before October 14, 2011 by delivering same to the Court in a sealed envelope

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2010-003357

10/03/2011

marked with the case number and parties to chambers at Central Court Building, Suite 9C, 201 West Jefferson, Phoenix, AZ 85003.

ALERT: Effective September 1, 2011, the Arizona Supreme Court Administrative Order 2011-87 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.