

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

\*\*\* FILED \*\*\*  
07/09/2002

07/05/2002

CLERK OF THE COURT  
FORM V000A

HON. GARY E. DONAHOE

S. Yoder  
Deputy

CV 1999-009432

FILED: \_\_\_\_\_

DANIEL B RIFLEY

RICHARD T TREON

v.

AMERICAN FAMILY INSURANCE GROUP, JAMES T ACUFF JR  
et al.

LEON J BRANDRIET

DECISION AND ORDER

There are a variety of motions pending before the Court. The Court has considered the pleadings on several of the motions. Oral argument is requested. However, because the pleadings are so comprehensive, oral argument will not assist the Court in resolving the issues.

**IT IS HEREBY ORDERED** denying Defendants' Motion to Strike Affidavit of Marn Rivelle and granting Defendants' Motion to Strike Affidavit of Plaintiff's Attorney, Leon J. Brandriet.

**IT IS FURTHER ORDERED** denying Defendants' Motion for Summary Judgment Re: Claims Against John W. Young because there are genuine issues of material fact regarding whether Defendant Young was negligent and participated in any acts of bad faith.

**IT IS FURTHER ORDERED** denying Defendants' Motion for Summary Judgment Re: Bad Faith and Punitive Damages for the reasons stated on the record on February 1, 2002 at the conclusion of oral argument on Defendants' Motion for Summary

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Judgment Re: Arbitration Clause Issues, Consumer Fraud, Bad Faith and Punitive Damages.

The facts necessary to resolve Defendants' Motion for Partial Summary Judgment Re: Rifley's Breach of Contract and Plaintiff's Cross-Motion for Summary Judgment are not in dispute. The parties submitted to an appraisal process which resulted in a final award to Plaintiff in the amount of \$1,064,467.08. Defendant American Family paid that award. Defendants did not invoke any provisions in the policy regarding limitations on expenditure of the awarded money. Defendants did not challenge the award. There is no evidence that the award was a result of "fraud, corruption, or other prejudicial misconduct." *Hirt v. Hervey*, 118 Ariz. 543, 545, 578 P.2d 634 (App. 1978). The Court is of the opinion that Defendants' claims for breach of contract and recoupment are simply collateral attacks on a final award. Therefore, the Court is of the opinion that Defendants' claims for breach of contract and recoupment have either been waived or are barred because the appraisal award is final. Accordingly,

**IT IS FURTHER ORDERED** denying Defendants' Motion for Partial Summary Judgment Re: Rifley's Breach of Contract and granting Plaintiff's Cross-Motion for Summary Judgment.

**IT IS FURTHER ORDERED** denying Defendants' Motion to Preclude Plaintiff's Opposition to American Family's Recoupment Claim.