

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 1999-009334

11/01/2004

HONORABLE MARK W. ARMSTRONG

CLERK OF THE COURT
C. Danos
Deputy

FILED: 11/03/2004

ALLAN WACHTER, et al.

DAVID C TIERNEY
JAMES W ARMSTRONG

v.

JOHN LEZDEY, et al.

DAVID PAUL BROOKS

DOUGLAS J ROVENS, ESQ
ZELLE HOFMANN VOELBEL . . .
660 S FIGUEROA ST STE 1900
LOS ANGELES CA 90017

**MATTERS TAKEN UNDER ADVISEMENT
TRIAL DATE AFFIRMED**

3:02 p.m. This is the time set for oral argument. Plaintiff is represented by counsel, David C. Tierney and James W. Armstrong. Defendant is represented by counsel, David Paul Brooks and Douglas J. Rovens.

Court reporter, Jessica Casto Moroz, is present.

The matters before the Court are identified to be:

- Defendant's Motions in Limine (6).
- Defendant's Motion to Testify at Trial by Video Conference or to Continue the Trial Date.
- Plaintiff's Motion re: Fugitive Disentitlement Doctrine.

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Argument is presented on Defendant's Motions in Limine as follows:

- Motions in Limine #1, #2 and #3 re: preliminary injunction issued by Judge Burke and the permanent injunction.
- Motion in Limine #4 re: contempt.
- Motion in Limine #5 re: diminution in Alpha One stock value.
- Motion in Limine #6 re: evidence that Plaintiff wants to present regarding the Defendant's criminal conduct, vandalism and threats.

Following Plaintiff's response to Defendant's argued motions, Defendant advises the Court that its Petition for Special Action is being filed today; a copy of which will be delivered to this Court this week.

Argument is presented on Plaintiff's Motion re: Future Disentitlement Doctrine.

IT IS ORDERED that the matters discussed today are deemed submitted and taken under advisement.

Relative to trial,

IT IS FURTHER ORDERED that by **5:00 p.m. on November 19, 2004**, counsel shall submit the following documents to the court by e-mail, on CD or IBM-compatible double-sided, high density 3.5 inch diskettes, in Microsoft Word, copies of which shall be hand-delivered, telefaxed or e-mailed to opposing counsel on the date they are delivered to the Court.

- Proposed instructions, both preliminary and final.
- Proposed voir dire questions that counsel propose to ask. The Court having received proposed voir dire from Mr. Tierney, Mr. Tierney may supplement his proposed voir dire.
- A stipulated statement of claims, defenses and uncontested facts to be read to the prospective jury.

IT IS FURTHER ORDERED setting a final Pretrial Conference, on **November 23, 2004, at 10:00 a.m. (2 hours)**.

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IT IS FURTHER ORDERED affirming jury selection will begin on **November 30, 2004, at 9:30 a.m.**, unless the Court's rulings change these times.

Counsel are directed to contact the clerk of this division at (602) 506-3553 by no later than **November 10, 2004**, to discuss exhibit procedures. Due to the number of exhibits to be used at trial, counsel shall present all exhibits with a list of exhibit descriptions to the clerk of this court by 9:00 a.m. two weeks prior to trial. The clerk may require assistance in marking and listing exhibits.

4:30 p.m. Matter concludes.