

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2003-004360

02/17/2004

THE HONORABLE MICHAEL A. YARNELL

CLERK OF THE COURT
P. Brown
Deputy

FILED: 02/19/2004

SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT

DOUGLAS G ZIMMERMAN

v.

REX E CHRISTIAN, et al.

LINDA ANN CHRISTIAN

WILLIAM D RISKE

MINUTE ENTRY

9:30 a.m. In chambers.

Time set for continued comprehensive pretrial conference. Counsel, Douglas G. Zimmerman, is present for Plaintiff. Counsel, Linda Ann Christian, is present for Defendants.

Court Reporter is not present.

Counsel outline their designated trial experts and their opinions.

Defendant landowner has designated appraiser Paul Talmoge, whose report has been produced and contains an opinion of severance damages in the \$30,000 or less range based on comparable sales, market studies and sight lines, but not including EMF opinions. Defendant landowner expects to testify that he is "nervous about living next to or under power lines," thus injecting the EMF issue into the case.

Plaintiff condemning authority has designated Dennis Lopez as its appraiser, but does not intend to use Mr. Lopez for any EMF or severance damage issues; has designated John Loper as its severance damage expert; and, has designated Art Kruse as its EMF expert solely as a rebuttal expert to the expected EMF testimony of the landowner.

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IT IS ORDERED Defendant may designate and may call all three experts, provided however, if the landowner (or any expert designated by landowner) does not testify about EMF fears, then condemning authority expert Art Kruse shall not testify.

FURTHER ORDERED Defendant landowner may, on or before **5:00 p.m., March 17, 2004**, designate an additional trial expert on EMF (or supplement Mr. Lopez's opinions to included EMF opinions).

FURTHER ORDERED except as provided above, there shall be no additional trial experts in this action.

FURTHER ORDERED the parties shall and must follow through with the planned private mediation. All parties, including designated representatives with full settlement authority, must personally attend and participate in a private mediation.

A Comprehensive Pretrial Conference is conducted.

THIS IS A TRIAL SETTING ORDER. PLEASE READ CAREFULLY FOR COMPLIANCE.

Motion to Set and Certificate of Readiness has been filed,

IT IS ORDERED:

1. This matter is set for trial to a jury on **July 14, 2004**, at **9:30 a.m.** The estimated length of trial is **3 days**.

THIS IS A FIRM TRIAL SETTING. A MOTION TO CONTINUE BASED ON LACK OF PREPARATION WILL ORDINARILY NOT BE GRANTED.

2. A Final Pretrial Management Conference is set for **July 8, 2004**, at **8:30 a.m.**

DUTIES PRIOR TO THE FINAL PRETRIAL MANAGEMENT CONFERENCE

3. DISCLOSURE, MOTIONS AND DISCOVERY

A. Rule 26.1. All parties shall have exchanged up-to-date Rule 26.1 A.R.Civ.P. Supplemental Disclosure Statements **including a disclosure of all final expert witness opinions by 5:00 p.m. on May 7, 2004**. No information disclosed after this date may be used at trial absent Court Order on motion and

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affidavit. Such information must be seasonably disclosed on an ongoing basis pursuant to Rule 26.1 **prior** to this date.

B. Pretrial Motions. All pretrial motions, other than *Motions in Limine*, shall be filed no later than **5:00 p.m. on May 14, 2004**.

C. Discovery Cut-Off. All discovery shall be completed by **5:00 p.m. on May 14, 2004**.

4. MOTIONS IN LIMINE. All *Motions in Limine* shall be filed no later than 30 days before the Pretrial Management Conference and such motions must meet the test of State v. Superior Court, 108 Ariz. 396, 397; 499 P.2d 152 (1972): The primary purpose of a *Motion in Limine* is to avoid disclosing to the jury prejudicial matters which may compel a mistrial. See also, Ariz. Rules of Evidence 103(c). A written response to a *Motion in Limine* may be filed no later than ten (10) days thereafter. The Court may rule on *Motions in Limine* without oral argument. No replies shall be filed.

5. JOINT PRETRIAL STATEMENT. Two judicial days **before** the Pretrial Management Conference, counsel shall deliver to the trial judge a copy of the **Joint Pretrial Statement** signed by all counsel.

Deposition Summary: In addition to the information required by Rule 16(d), A.R.C.P., counsel shall at the Pretrial Management Conference provide to the Court copies of any deposition transcripts to be read to the jury. The offering party will highlight the portions to be read, the other side will highlight Rule 106 additions, and any objections for the Court to rule on will be clearly marked in the margin. The parties are encouraged to agree on narrative summaries of deposition testimony, using brief question and answer excerpts only to emphasize very important testimony or to cover areas of testimony that cannot be summarized to the satisfaction of all counsel. No stipulation should be unreasonably refused.

Final Trial Witnesses: In addition to the information required by Rule 16(d), A.R.C.P., the Joint Pretrial Statement shall include an exhibit titled: **Final Trial Witness List**. This list shall contain the name of each witness a party actually intends to call at trial, the day on which they intend to call each witness and the estimated time needed for direct, cross and re-direct examination.

6. JURY INSTRUCTIONS; VOIR DIRE QUESTIONS. No less than thirty (30) days before the Pretrial Management Conference, counsel shall meet and agree on as many proposed jury instructions as possible. Two judicial days before the Pretrial Management Conference, counsel shall deliver to the trial judge, with their Joint Pretrial Statement, copies of:

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- A. Proposed voir dire questions.
- B. A joint set of agreed-upon preliminary and final jury instructions.
- C. Separate sets of requested instructions that have not been agreed upon. Please read Rosen v. Knaub, 175 Ariz. 329; 85 P.2d 381 (1993) and the RAJI Civil 3d Statement of Purpose and Approach before preparing requests for non-RAJI instructions.

Recommended Arizona Jury Instructions (RAJI) need not be typed and may be requested in the following manner: RAJI 3d Standard 1 - Duty of Jurors. Non-RAJI instructions should be typed. Each instruction should cover only one subject.

DUTIES AT PRETRIAL MANAGEMENT CONFERENCE

- 7. At the Pretrial Management Conference, counsel shall be prepared to discuss:
 - A. Time limits in voir dire, opening statements, examination of witnesses and closing arguments.
 - B. Stipulations for the foundation and authenticity of exhibits.
 - C. Preliminary jury instructions, juror notebooks (counsel shall bring any proposed juror notebooks to the conference), mini opening statements and voir dire.
 - D. Agreed-upon deposition summaries and excerpts from deposition transcripts and the editing of any videotaped depositions.
 - E. Use of short-trial or summary jury trial.
 - F. Any special scheduling or equipment issues.

8. All exhibits shall be exchanged 30 days before trial. Counsel shall confer regarding exhibits so duplicates are avoided. **At least ten days before trial, counsel or their knowledgeable assistants shall call the division clerk at 602-506-4396 to discuss procedures for marking exhibits.** Original depositions are provided to the clerk for the record and not marked as exhibits.

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9. One day's jury fees will be assessed unless the Court is notified of settlement before 2:00 p.m. on the judicial day before the trial. Counsel are reminded to promptly notify the court of any settlement pursuant to Rule 5.1(c), A.R.C.P.