

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

\*\*\* FILED \*\*\*  
05/02/2001

04/30/2001

CLERK OF THE COURT  
FORM V000A

THE HONORABLE SHERRY HUTT

S. Morris  
Deputy

CV 2000-001517

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

ANTHONY J MARTORI, et al.

BRAD K KEOGH  
LOUIS A STAHL

v.

DUDLEY GREER

MICHAEL S MCCOY

MINUTE ENTRY

IN CHAMBERS: This is the time set for oral argument on Defendant's Motion to Compel and Plaintiffs' Motion for a Protective Order. Plaintiffs are represented by counsel, Brad Keough. Defendants are represented by counsel, M. Scott McCoy. Harquahala Generating Company is represented by counsel, Louis A. Stahl.

Court Reporter, Lynn Cronin, is present.

THE COURT FINDS that the requested discovery pertains to matters material herein and can be reasonably related to potential evidence herein.

The expert opinions, property value, and pumping practices of Plaintiffs are at issue.

Plaintiffs respond that its experts have been disclosed and have nothing further, and they have no duty to seek out further expert opinions.

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The dispute lies in the request for farming practices. Plaintiffs argue its practices should not be disclosed to Defendants. Defendants seek the irrigation practices which would disclose causation and distinguish impact of Defendants.

THE COURT FINDS that whether crops have been rotated on the fields in issue, whether irrigation practices have altered over time, whether other pumps have had problems, and all matters affecting the water table are discoverable.

Plaintiffs may not claim damages and restrict access to relevant information. Defendants may not have broad-based discovery of Plaintiffs' business without a focus on that which is likely to lead to admissible evidence.

Plaintiffs' request for damages puts in issue the recent history of the fields in question, including farming practices.

The Plaintiffs have farmed continuously for about 50 years. The Defendants' pond has been in existence for about 20 years. The problems have occurred in the last 6 years.

IT IS ORDERED granting the Motion to Compel in part and denying the Protective Order in part. To the extent that the materials are viewed by Defendants' attorneys and experts, that is permissible, but the discovery shall not be shared with clients or others outside of this litigation.

The discovery is limited to the fields in question and not all of Plaintiffs' business or farming practices. The time is for 1998 and forward and that which would begin earlier and cause later impacts. The time is six years of activity.

Further, Harquahala Generating Company desires their negotiations with Martori not be made discoverable herein. The non-party questions relevancy. The non-party has a confidentiality agreement with Plaintiffs.

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Defendants object as Plaintiffs' restoration costs do not reflect the actual value to Plaintiffs which may have no loss as a sale for non-farm purposes.

Plaintiffs are not asserting diminution in value damages. Plaintiffs are seeking crop damage and remediation costs to stop leaking.

Defendants object to remediation of land as a damage if the land is not to be farmed.

THE COURT FINDS the existence of a suitor is a known fact. The actual sale and terms thereof are unknown and speculative. The Defendants can question future damages and need to remediate if the land is sold, with a good faith basis. The actual terms of negotiations are not relevant to this matter.

IT IS ORDERED denying discovery of Plaintiffs' negotiations with Harquahala Generating Company.

Defendants' Motion to Strike is well taken as to comments in settlement conference.

IT IS ORDERED granting the Motion to Strike.

Matter concludes.