

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2004-004534

12/10/2004

HONORABLE ROBERT L. GOTTSFIELD

CLERK OF THE COURT  
L. Muhammad  
Deputy

FILED: 12/13/2004

P S M / MAGNA CARTA INSURANCE  
COMPANIES

WILLIAM H WESTOVER

v.

ARIZONA STATE DEPARTMENT OF  
INSURANCE

MARY E KOSINSKI

STEPHEN E SILVERMAN  
RICHARD T TREON

JOHN ROLLIE WIGHTMAN

BRUCE E MEYERSON

**MINUTE ENTRY**

8:00 a.m. This is the time of hearing various motions.

Present on conference telephone are William H. Westover on behalf of the plaintiff; Richard Treon and Stephen Silverman on behalf of defendants Clifford and Karen Pettingill and defendant James F. O'Toole; and John Rollie Wightman as intervenor on his own behalf. Present in person is Mary E. Kosinski on behalf of defendant Arizona State Department of Insurance.

Court reporter: Marmie Guimont.

After extended argument, the court takes all matters under advisement.

9:35 a.m. Hearing concludes.

**LATER:**

After further consideration,

THE COURT FINDS, ORDERS and DETERMINES as follows:

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1. Deferring until a future hearing PSM's motion (joined by O'Toole) to transfer or consolidate CV2004-004534 (Gottsfeld) and CV2004-015617 (Yarnell—bad faith case).

2. Adopting the position of O'Toole and DOI that A.R.S. § 20-157.01 does not change this court's ruling with respect to § 20-466(E) and determines that the confidentiality set forth in the latter statute remains only until an investigation is complete and that the PSM claim file should be released by DOI once the court is certain that all privileges asserted by PSM had been considered by the court or a discovery master. The court is considering the appointment of Bruce Meyerson to replace Judge Kamin, but will only make that determination once it determines the magnitude of the work in looking through the PSM claim file and the claims of privilege which this court will again permit PSM to assert in detail.

3. Permitting PSM to assert all privilege claims with respect to the PSM claim file in the hands of DOI and requiring an in camera inspection of the PSM claim file, along with a privilege log of PSM. PSM is granted **20 days** from the date of receipt of this minute entry in which to file the privilege log.

4. Reaffirming this court's prior orders of May 10, 2004 and July 20, 2004. Mr. Kamin has now become a law clerk for the Arizona Supreme Court, and PSM has filed a special action, which the Court of Appeals determined not to hear with respect to this court's order of July 20, 2004.

5. Denying PSM's motion for summary judgment and O'Toole and Pettingills' cross-motion for summary judgment at this time.

6. While the PSM claim file will be subject to an in camera review and a determination with respect to any privileges claimed by PSM, this is not the case with respect to the SOS documents which the court orders now to be **unsealed** and released to intervenor O'Toole, to take place on January 3, 2005.

7. If this court determines that the claims of privilege of PSM with respect to the PSM claim file are insufficient, then DOI will be ordered to release the PSM claim file to Mr. Wightman.

8. Deferring PSM's motion to dismiss/motion to stay pending appraisal as directed to the CV2004-015617 case.

**LATER:**

Mr. Meyerson in response to the court's telephone call advises he has no known conflict with respect to this matter.