

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2004-020055

12/15/2005

HONORABLE ROBERT C. HOUSER

CLERK OF THE COURT  
R. Tomlinson  
Deputy

FILED: 12/19/2005

ARIZONA STATE, et al.

BRYAN B PERRY

v.

BUCKEYE VALLEY R V PARK INC, et al.

DALE S ZEITLIN

PAT FEENEY MANAGING PARTNER  
MORFEENCAL LLC  
77 E MARYLAND  
PHOENIX AZ 85012  
BILL MURNEY MANAGING PARTNER  
MURNEY GROUP LLC  
5227 E ARCADIA LN  
PHOENIX AZ 85018  
ROBERT E LEONARD STATUTORY  
AGENT JOEY NELL LEONARD LTD  
PARTNERSHIP  
4715 E CALLE DEL MEDIA  
PHOENIX AZ 85018  
WAYNE J SCHWEIKART  
8451 N WINDSWEPT LN  
TUCSON AZ 85743  
SUZANNE M SCHWEIKART  
8451 N WINDSWEPT LN  
TUCSON AZ 85743  
LEON HARDISON MANAGING  
GENERAL PARTNER HARDISON  
FARMS II  
PO BOX 35  
ARLINGTON AZ 85322

**TRIAL SETTING ORDER**  
**(WITH PRE-TRIAL MANAGEMENT CONFERENCE)**

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10:21 a.m. This is the time set for Telephonic Rule 16 Comprehensive Pretrial Conference. Appearing telephonically on behalf of the Plaintiffs is Bryan Perry, and on behalf of the Defendants is Dale Zeitlin.

Court reporter is not present.

Discussion is held.

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

**IT IS ORDERED** adopting the terms of the Rule 16(b) Joint Pretrial Conference Memorandum to the extent that they do not conflict with the orders stated herein. References to “counsel” shall be read to include unrepresented parties.

**IT IS FURTHER ORDERED** setting this matter for a 3-day jury trial commencing on **December 4, 2006<sup>1</sup>** at **9:30 a.m.** before:

**HON. ROBERT HOUSER**  
**Judge of Superior Court of Arizona**  
**Northeast Regional Court Center**  
**18380 N. 40<sup>th</sup> Street**  
**Courtroom #110**  
**Phoenix, Arizona 85032**  
**(602) 506-5424**

**THIS IS A FIRM TRIAL SETTING. A MOTION TO CONTINUE ORDINARILY WILL NOT BE GRANTED.**

Trial days are normally 9:30 a.m. to 4:30 p.m., Monday through Thursday.

**IT IS FURTHER ORDERED** that all dispositive motions shall be filed not later than 75 days prior to trial so that they can be briefed, scheduled, argued and decided prior to trial. Motions in *limine* shall be filed in accordance with Rule 7.2, Ariz. R. Civ. P. Motions in *limine* must meet the test of *State v. Superior Court*, 108 Ariz. 39 (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. R. Evid. 103(c). Each side may file one motion in *limine* not to exceed

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<sup>1</sup> One day’s jury fees will be assessed unless the court is notified of settlement by 2:00 p.m. on the judicial day before trial.

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15 pages and not containing more than five separate subjects. Motions not filed in accordance with this order will not be considered.

**IT IS FURTHER ORDERED** Plaintiffs' updated appraisal shall be submitted to the Defendants no later than **March 30, 2006**.

**IT IS FURTHER ORDERED** Defendants' appraisal reports shall be submitted to the Plaintiff no later than **June 28, 2006**.

**IT IS FURTHER ORDERED** expert opinions shall be submitted by all parties no later than **August 20, 2006**.

**IT IS FURTHER ORDERED** that the discovery cutoff date is **October 20, 2006**.

**IT IS FURTHER ORDERED** that the following rules shall apply to all depositions conducted in this action unless otherwise ordered by the Court:

- A. No objections shall be made except as follows:
  - i. Object to the form of the question.
  - ii. Object, privileged under the [applicable] privilege.
- B. No speaking objections shall be allowed. If, but only if, the questioner asks for the basis of an objection to the form of the question a brief explanation shall be given.
- C. If a privilege objection is made, the particular question shall not be answered without subsequent court order. The deposition shall proceed subject to reconvening if the court should later overrule the objection. Fees, costs and other sanctions may be imposed for groundless privilege objections.
- D. Attorneys shall not interrupt witnesses. Lengthy compound questions shall be avoided.
- E. The length of any deposition shall not exceed four (4) hours (excluding breaks) without the agreement of all counsel or a prior order of the court.
- F. There shall be no attorney-client conferences between the witness and his/her attorney while any question is pending. There shall be no such conferences during the question sessions of the deposition. There may be, at the request of any witness or party, one five (5) minute break every half hour and one ten (10) minute break every hour.

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- G. Unless agreed by all parties, any commenced deposition shall proceed on a business day until completed unless suspended by any party pursuant to Rule 30(d), Ariz. R. Civ. P.

**IT IS FURTHER ORDERED** setting a Final Pretrial Management Conference for **November 27, 2006 at 8:30 a.m.**

At the PTMC, counsel who will try the case shall appear and be prepared to discuss and resolve where applicable:

- A. Time limits for *voir dire*, opening statements, witness examinations and closing arguments.
- B. Stipulations and objections regarding witnesses and exhibits. If time permits, the court will rule on objections.
- C. Jury instructions, juror notebooks (counsel shall bring any proposed juror notebooks to the conference), mini opening statements, *voir dire* and verdict forms.
- D. Agreed-upon deposition summaries and excerpts from depositions including objections thereto.
- E. Scheduling, equipment or interpreter issues.
- F. Status of settlement efforts.
- G. Motions in *limine* and other pending motions.
- H. Use of short-trial or summary jury trial.
- I. Other matters addressed in the updated joint pretrial statement.

A joint pretrial statement (JPTS) addressing at least all of the items set forth in Rule 16(d), Ariz. R. Civ. P., shall be filed three (3) judicial days before the PTMC. The following shall be filed with the JPTS:

- A. Proposed *voir dire* questions.
- B. A list to be read to the jury with names of all witnesses who may testify.
- C. A set of agreed-upon jury instructions.

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- D. Separate sets of requested instructions that have not been agreed upon. (Review *Rosen v. Knaub*, 175 Ariz. 329, 857 P.2d 381 (1993) and the Recommended Arizona Jury Instructions (RAJI) Civil 4th “Statement of Purpose and Approach” before requesting non-RAJI instructions.) RAJI’s need not be typed and may be requested in the following manner: RAJI Civil 4<sup>th</sup> Preliminary—Duty of Jurors or by use of the jury instruction and verdict request forms contained in RAJI Civil 4th. Non-RAJI instructions should be typed. Each instruction should cover only one subject.
- E. A stipulated, brief summary of the case, which the court can read at the outset of *voir dire*.
- F. Proposed findings of fact and conclusions of law (if a request for findings has been or will be filed).
- G. All deposition or other transcribed testimony to be used at trial including Rule 106 additions. The proposed testimony is to be identified by reference to page and line numbers. Objections, if any, to such testimony and the grounds for such objections are also to be set forth.
- H. A listing of the estimated time needed for direct, cross and re-direct examination of each witness a party actually intends to call at trial and the day on which that party intends to call each witness.

All exhibits shall be exchanged 30 days before trial. Counsel shall confer regarding exhibits so duplicates are avoided. All objections to exhibits not set forth in the JPTS shall be deemed waived except for good cause. **At least ten days before trial, counsel or their knowledgeable assistants shall call the division clerk at (602) 372-7734 to discuss procedures for marking exhibits.** Exhibits shall be marked sequentially using the numbers assigned to the exhibits in the JPTS. Original depositions are provided to the clerk for the record and not marked as exhibits.

**IT IS FURTHER ORDERED** that the parties shall arrange for and participate in a Private Mediation by **September 20, 2006**.

**IT IS FURTHER ORDERED** that the parties and insurance adjusters must personally attend and participate in a Private Mediation. The Private Mediation must be held and the parties must participate in good faith even if no settlement is expected.

10:27 a.m. Hearing concludes.