

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

\*\*\* FILED \*\*\*  
11/21/2002

11/19/2002

CLERK OF THE COURT  
FORM V000A

HON. EDWARD O. BURKE

K. Ballard  
Deputy

CV 2001-004319

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

GREEN RABBIT DESIGN STUDIO INC

STEVEN A GRUENEMEIER

v.

TRAVELERS INSURANCE COMPANY, et al.  
AMY M SAMBERG

DECISION

The Court has had Defendant Travelers Insurance Company's Motion for Summary Judgment or, In The Alternative, to Stay Proceedings for Failure to Engage in Appraisal Process under advisement and enters the following decision.

The motion is DENIED. Defendant failed to invoke the appraisal clause in a timely manner. Meineke v. Twin City Fire Insurance Company, 181 Ariz. 576, 892 P.2d 1365 (App. 1994) requires that a request for appraisal must be made within a reasonable time. The Court finds that Travelers Indemnity Company of America failed to request an appraisal in a reasonable time.

The Court has also had Defendant Travelers Indemnity Company of America's Consolidated Motion for Summary Judgment under advisement and enters the following decision.

The consolidated Motion for Summary Judgment is DENIED.

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The record is replete with factual questions, not the least of which is the necessity to determine whether a reasonable basis existed for denying the benefits of the policy and Defendant's knowledge or reckless disregard of a lack of reasonable basis for denying the claim, Noble v. National American Life Insurance Co., 128 Ariz. 188 624 P.2d 866 (1981).

The issue of whether the coverage was fairly debatable is also for the jury to decide, Linthicum v. Nationwide Life Insurance Co., 150 Ariz. 354, 723 P.2d 703 (App. 1985).

In order to properly decide the issue of punitive damages, the Court must make credibility determinations which it may not do on a motion for summary judgment, Thompson v. Better-Bilt Aluminum Products, Inc., 171 Ariz. 550, 832 P.2d 203 (1992).