

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2017-052655

06/11/2021

HONORABLE SARA J. AGNE

CLERK OF THE COURT
C. Lett
Deputy

MICHAEL BERENT, et al.

MICHAEL BERENT
17974 N 167TH DR
SURPRISE AZ 85374

v.

GRAZYNA MROCKOWSKA, et al.

KEVIN M ARNOLD
DEBRA S BROCKWAY
JONATHAN A DESSAULES
JUDGE AGNE

MINUTE ENTRY

Courtroom 108 - NER

10:16 a.m. This is the time set for a Trial Planning Conference via Court Connect. Plaintiff Nancy Berent is present and represented by counsel Jonathan A. Dessales. Defendant/Cross Defendant Bell West Ranch Homeowners Association, Inc., is represented by counsel Kelsey Dressen for counsel of record, Kevin M. Arnold. Defendant/Cross Claimant Marta Mrockowska is present and represented by counsel Debra S. Brockway.

A record of the proceedings is made digitally in lieu of a court reporter.

LET THE RECORD REFLECT that Counsel Brockway notifies the Court that Defendant/Cross Claimant Mirosław Mrockowski has passed away.

Discussion is held regarding the status of the case.

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Pursuant to Administrative Order 2021-077, the Court is inclined to grant the continuance requested by Counsel Brockway in the Trial Readiness Form.

Over the objection of Petitioner,

IT IS ORDERED granting continuance of the Trial.

IT IS FURTHER ORDERED vacating the Trial set July 19, 2021 and resetting the **6-day Trial to a Jury** for **November 2-4, 8-10, 2021 at 9:00 a.m.** in this division before:

**THE HONORABLE SARA AGNE
MARICOPA COUNTY SUPERIOR COURT
NORTHEAST REGIONAL COURT
18380 NORTH 40TH STREET
COURTROOM 108
PHOENIX, ARIZONA 85032
(602) 506-8288**

Jury trial days are normally 9:00 a.m. to 12:00 p.m. and 1:30 p.m. to 4:30 p.m., Monday through Thursday.

Counsel/Parties shall make note that the Court reserves for itself **one (1) day** for the purpose of jury selection and jury deliberations.

THIS IS A FIRM TRIAL SETTING. Motions to continue based on lack of preparation will ordinarily not be granted.

If counsel learn of any pre-existing conflicts with said trial date, they shall notify the Court, in writing, within five (5) days from today's date.

All court proceedings are recorded digitally and not by a court reporter. Pursuant to Local Rule 2.22, if a party desires a court reporter for any proceeding in which a court reporter is not mandated by Arizona Supreme Court Rule 30, the party must submit a written request to the assigned judicial officer at least ten (10) judicial days in advance of the hearing, and must pay the authorized fee to the Clerk of the Court at least two (2) judicial days before the proceeding. The fee is \$140 for a half-day and \$280 for a full day.

Requests for interpreters, court reporters or video conference must be made at least fourteen (14) days prior to the trial/hearing date.

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Trial time will be divided between Plaintiff(s) and Defendant(s).

JURY PANEL

A panel of 8 jurors shall decide this matter. The Court, after input from the parties at the Final Trial Management Conference, shall determine the number of required alternates. The Court intends to order a total panel of 25 jurors for jury selection. If either party believes that this would be inadequate, the issue may be addressed at the Final Trial Management Conference.

One day's jury fees will be assessed against the parties (evenly divided) unless the Court is notified of settlement by 10:00 a.m. on the judicial day before trial. Counsel are reminded to promptly notify the Court of any settlement pursuant to Ariz. R. Civ. P. 5.3(d). The preferred method of communication is via e-mail marked "Urgent—Notice of Settlement re Trial" directed to the Judicial Assistant, Stephanie Castellon, at Stephanie.Castrellon@JBAZMC.Maricopa.Gov.

FINAL TRIAL MANAGEMENT CONFERENCE/ORAL ARGUMENT

IT IS FURTHER ORDERED vacating the Final Trial Management Conference set July 2, 2021 and resetting a **Virtual Final Trial Management Conference on October 22, 2021 at 10:15 a.m. (time allotted: 30 minutes)** in this division. Trial counsel shall appear *virtually* for the conference. Any self-represented party shall also appear virtually for the conference. This minute entry order sets forth tasks that must be completed by trial counsel. Any party that is self-represented is advised that all tasks imposed upon "counsel" in this minute entry Order apply to self-represented litigants.

IT IS FURTHER ORDERED setting a **Virtual Trial Planning Conference on September 24, 2021, at 10:30 a.m. (time allotted: 15 minutes)**.

IT IS FURTHER ORDERED that all parties shall have their positions ready at the September 24, 2021 Trial Planning Conference regarding the issue of whether the appearance of Grazyna Mroczkowska can be waived at Trial.

For both the **September 24, 2021, Trial Planning Conference and the October 22, 2021 Final Trial Management Conference**, please join the hearing via:

<https://tinyurl.com/Courtroom108>

You can also dial in using your phone.

Phone: [+1 917-781-4590](tel:+19177814590) and Conference ID: 929 847 029#

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Use of the above link can be made easier by downloading the Microsoft Teams application first; for more on the new platform, including an introduction video and participant guide, please visit: <https://superiorcourt.maricopa.gov/court-connect>

Oral Argument on any pretrial motions, including Motions *in limine*, shall be conducted at the time of the Final Trial Management Conference.

JOINT PRETRIAL STATEMENT

A *Joint Pretrial Statement (JPTS)* must be filed no later than **two weeks before FTMC**. In addition to the materials required by Ariz. R. Civ. P. 16(f)(2), counsel shall meet prior to the Final Trial Management Conference in order to discuss and prepare the following, which shall be filed with or included in the JPTS:

- A. ***Voir Dire***: Proposed agreed-upon *voir dire* questions.
- B. **Witnesses**: Within the Joint Pretrial Statement, there shall be a list of all witnesses each party intends to call at trial in the order in which the party intends to call the witness, together with the estimated time needed for direct, cross, and redirect examinations.
- C. **Jury Instructions and Verdict Forms**: A joint set of agreed-upon jury instructions and verdict forms. Each party shall provide separate sets of any requested instructions that have not been agreed upon. (Please review *Rosen v. Knaub*, 175 Ariz. 329, 332 (1993), before requesting non-RAJI instructions.) Revised Arizona Jury Instructions (please use the most current version) need not be retyped, but may be listed by name and number, such as: (a) RAJI Preliminary 1–Duty of Jurors; (b) RAJI Standard 2–Burden of Proof; (c) RAJI Negligence 1–Violation of Statute, etc.

NON-RAJI INSTRUCTIONS shall be typed in Word format, numbered consecutively, one per page, with legal authority in support of the instruction, with email copy of the Word document(s) also sent to Division staff.

- D. **Claims**: A brief statement of the claims for inclusion in RAJI Preliminary 14–Claims Made and Issues to Be Proved.

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- E. **Summary of Case:** A stipulated brief summary of the case, to be read by the Court during *voir dire*.
- F. **Deposition Transcripts:** A list, by page and line numbers, of all deposition or other transcribed testimony that may be offered at trial, other than for impeachment, including designations of testimony that a party believes ought in fairness to be introduced pursuant to Ariz. R. Civ. P. 32(a) together with any testimony to be offered by an opposing/other party. The Court shall also be provided with copies of those parts of any such testimony to which objection is made, indicating the testimony objected to and the reasons for such objection. ***Any objection not so included is waived.*** Since jurors generally prefer narrative summaries or brief excerpts of questions and answers, the Parties should confer and prepare agreed-upon summaries. Counsel shall present original depositions for filing at the same time they present exhibits. Original depositions are provided to the Clerk for the record and **are not** marked as exhibits.
- G. **Exhibit List:** A list of all marked exhibits containing a brief description of each exhibit and any objections to such exhibits. ***Any objection not so included is waived. Again, deposition transcripts are not to be marked as exhibits.***
- H. **Expert Disclosures:** Copies of all expert disclosures made pursuant to Ariz. R. Civ. P. 26.1(a)(6) and (d).
- I. The number of jurors and alternates agreed on, whether the alternates may deliberate and the number of jurors required to reach a verdict.

DUTIES AT THE FINAL TRIAL MANAGEMENT CONFERENCE

Counsel who will try the case shall appear *virtually* and be prepared to discuss and resolve:

- A. Allocation of trial time among the parties and, if appropriate, time limits for *voir dire*, opening statements, witness examinations, and closing arguments;
- B. Stipulations regarding witnesses testimony and the admission of exhibits;

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- C. Jury instructions, juror notebooks, and verdict forms;
- D. Deposition summaries and excerpts from depositions including objections thereto;
- E. Scheduling, equipment, or interpreter issues;
- F. Status of settlement negotiations;
- G. Motions *in limine*; and
- H. Other matters addressed in the JPTS.

DUTIES PRIOR TO TRIAL

In advance of the Final Trial Management Conference and/or Trial, the parties shall attend to the following:

- A. **Discovery Disputes**: If a discovery dispute needs judicial intervention, the Parties shall comply with Rule 26(d), Ariz. R. Civ. P., and may also email their three-page joint filing to Division staff to further secure an expedited Rule 26(d) Status Conference.
- B. **Motions in limine**: The granting or denial of a motion *in limine* turns on whether the admission of evidence reaches the level of reversible error or a mistrial. Said motions must meet the test of *State ex rel. Berger v. Superior Ct.*, 108 Ariz. 396 (1972): “The primary purpose of a motion in limine is to avoid disclosing to the jury prejudicial matters which may compel a mistrial.” Motions *in limine* are not granted “except upon a clear showing of non-admissibility.” The Parties shall not file motions denominated as “*in limine*” that are, in substance, late-filed motions for summary judgment.

1. Page Limit and Format: Neither the motion *in limine* nor the response may exceed **three pages**, including the caption. Showing that the motion has merit should not require more than that. Motions *in limine* shall be consecutively numbered in the caption identifying the party filing it and the subject of the motion; e.g. “Defendant’s Motion in *Limine* No. 1 Re: Insurance Agreement,” and shall deal with one discrete subject per motion. Do not respond to more than one motion in *limine* in each response.

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2. Substance: Any motion *in limine* or response to such a motion should begin with a simple declarative sentence that identifies the evidence that is the subject of the motion, with the understanding that the broader the scope of the evidence to be excluded, the less likely it is that a motion *in limine* will be granted. The remainder of the motion or response should then explain why a mistrial or reversible error would or would not result if the motion is denied, with citations to authority that have reached the same conclusion in the same or similar circumstances (this also applies to motions *in limine* based on any failure to disclose, keeping in mind that nondisclosure implicates Ariz. R. Civ. P. 37(c) and (h)). If the motion is unable to explain why its denial would result in a mistrial or reversible error, the remainder should then demonstrate persuasively what efficiency, economy, or other benefit is to be gained by granting the motion.

3. Rule 7.2: Motions *in limine* shall be filed in accordance with Ariz. R. Civ. P. 7.2. Prior to filing any motion *in limine*, the Parties through counsel **must meet and confer** to attempt to resolve issues to be raised by such motions, and any motions *in limine* must include a certification that counsel have so conferred.

4. Deadlines: The deadline for motions *in limine* is 30 days before the final pretrial management conference, unless otherwise separately directed by the Court. Responses must be filed no later than 15 days after service of the motion in limine. No replies should be filed, unless requested and approved by the Court.

5. Under Advisement: Although motions *in limine* will be considered as quickly as the Court's schedule permits, they will generally not be taken under advisement any sooner than 15 days before the start of the trial, regardless of when they are filed. If the parties believe that a ruling on such a motion early in the case will facilitate settlement, they should notify this Division (by telephone at (602) 506-8288 or e-mail to the judicial assistant, Stephanie.Castrellon@jbazmc.maricopa.gov) and every effort will be made to decide the issue as soon as time allows.

C. Daubert Motions: The deadline for any motion brought for a *Daubert* hearing or brought under Ariz. R. Evid. 702, is the same as the dispositive motion deadline. Failure to file such a motion by this date shall constitute a waiver of (1) any

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objection that the expert is not qualified to render expert testimony, and/or (2) any objection that any opinion of the expert should be excluded under Ariz. R. Evid. 702.

D. Exhibits: The following procedure applies as to all exhibits sought to be utilized at trial:

*The Court prefers hard copy exhibits for jury trials, please visit, <https://www.clerkofcourt.maricopa.gov/services/exhibits-submission>, for instructions and guidance as well as locations for in-person submission of exhibits. (This web site also notes that *electronic submission of exhibits is not permitted for jury trials at this time.*)*

1. **Due Date:** Exhibits to be offered at trial shall be delivered to the division clerk no later than **two weeks prior to trial date.**
2. **Organization:** Exhibits should be submitted to the Clerk separated by a tabbed and numbered divider. Staple or otherwise secure each individual exhibit so that pages do not become separated. If an exhibit is too heavy or large for a hanging file folder, place it in a binder. *Exhibits not securely bound or bound with binder clips, paper clips, or rubber bands will not be accepted.*

The list of exhibits should contain the case number and caption, the scheduled trial date, the party submitting the exhibits, the exhibit number, and a simple description of the exhibit. Keep the descriptions of the exhibits *simple*. Do not use a description that cannot be verified by looking at the document or item. *Do not include Bates numbers in your description of the exhibits*, as they do not constitute a simple description.

Exhibits shall be marked numerically and consecutively beginning with Plaintiff's exhibits and continuing sequentially with Defendant's exhibits (e.g. Plaintiff's exhibits 1, 2, 3, Defendant's exhibits 4, 5, 6). *Do not skip numbers*. Numbers will not be skipped or saved in anticipation of additional exhibits not yet submitted. Any missing or skipped exhibits shall be designated as "*Unused.*" Additional exhibits, if necessary, may be marked during the course of trial, although the parties are discouraged from waiting until trial to mark additional exhibits.

Counsel shall eliminate duplication of exhibits; duplicate exhibits *will not* be marked. If duplicate exhibits exist and they are removed by the Clerk

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and not marked, the Court's numbering will not be consistent with the numbering counsel provided. *Counsel shall, therefore, confer regarding exhibits to ensure that there are no duplicates.*

3. **Use of Depositions:** *Depositions should not be listed on the exhibit description list because depositions are not marked as exhibits.* Original depositions shall be provided to the Clerk at the time of trial for filing directly into the court record. Counsel shall retain a copy of the depositions for their use during the trial. The original depositions remain with the Clerk to be used as reference by the trial judge during testimony.
4. **Demonstrative Evidence:** Poster boards and large items may only be used for demonstrative purposes. Counsel shall advise opposing/other counsel of any demonstrative poster boards or other items at least three (3) judicial days prior to trial. Counsel may bring poster boards and large items to court to use during trial. However, if counsel intends any poster boards or large items marked as an exhibit, they must provide the clerk with an 8-1/2 x 11 photograph/copy of the item and include the photograph/copy in the submitted list of exhibits.
5. **Failure to Comply:** If a party fails to comply with the terms set forth about, it may result in that party's exhibit(s) being precluded at trial.
6. **Disclosure Objections:** If an objection is made at trial relating to untimely or non-disclosure, the burden is on the proponent of the evidence to establish that disclosure was properly made. The parties are strongly encouraged to create their own log for each trial exhibit as to the date and manner of disclosure.

USE OF COURTROOM EQUIPMENT

All parties are expected to be familiar with the workings of the courtroom's electronic equipment. If there is a need to become familiar with this division's electronic equipment, please make an appointment through this Division's Judicial Assistant, Stephanie Castrellon, at Stephanie.Castrellon@JBAZMC.Maricopa.Gov, and this Division's Bailiff, Jaime Ferniza, Jaime.Ferniza@JBAZMC.Maricopa.Gov, to test the equipment no later than one week prior to the scheduled proceeding.

COMMUNICATION WITH DIVISION

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Preferred communication with this Division is via email to the judicial assistant, Stephanie Castrellon, at Stephanie.Castrellon@JBAZMC.Maricopa.Gov. For any and all such written communication, all other parties to the case shall be endorsed. The phone number for this division is (602) 506-8288.

TIME ESTIMATE FORM

Counsel shall consider the following in filling out the witness information form and adjust the estimated time accordingly. Trial is held from 9:00 a.m. to 4:30 p.m., Mondays through Thursdays. Each trial day is budgeted to be 4.5 hours of actual in court time, exclusive of breaks and bench conferences. The Court reserves for itself 1 trial day for the Court to do its portion of voir dire, read preliminary and final jury instructions, and for jury deliberations. The parties will then be splitting the remaining time for each Party's portion of voir dire, opening statements, witness examinations, and closing arguments. The Court uses a timer to keep track of your time.

WITNESSES FOR PLAINTIFF:

	WITNESS NAME	DIRECT	CROSS	REDIRECT
1				
2				
3				
4				
5				

PLAINTIFF'S TOTAL WITNESS TIME ESTIMATE: _____

WITNESSES FOR DEFENDANT:

	WITNESS NAME	DIRECT	CROSS	REDIRECT
1				
2				
3				
4				
5				

DEFENDANT'S TOTAL WITNESS TIME ESTIMATE: _____

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TIME ESTIMATE FOR:	PLAINTIFF(S)		DEFENDANT(S)
VOIR DIRE			
OPENING STATEMENT			
CLOSING ARGUMENT	1 st :	2 nd :	

PLAINTIFF’S TOTAL TIME ESTIMATE: _____

DEFENDANT’S TOTAL TIME ESTIMATE: _____

NOTE: If there are multiple parties on the same side who are represented by different attorneys, then each party being represented by different attorneys shall fill out their own time estimates.

10:30 a.m. Matter concludes.

NOTE: Due to the spread of COVID-19, the Arizona Supreme Court Administrative Order 2020-79 requires all individuals entering a court facility to wear a mask or face covering at all times they are in the court facility. With limited exceptions, the court will not provide masks or face coverings. Therefore, any individual attempting to enter the court facility must have an appropriate mask or face covering to be allowed entry to the court facility. Any person who refuses to wear a mask or face covering as directed will be denied entrance to the court facility or asked to leave. In addition, all individuals entering a court facility will be subject to a health screening protocol. Any person who does not pass the health screening protocol will be denied entrance to the court facility.

The Arizona Constitution requires the Arizona Commission on Judicial Performance Review to conduct performance evaluations of superior court judges. The Commission is asking for your help to evaluate Maricopa County Superior Court judges currently undergoing performance review. After your hearing, if the judge you are in front of is undergoing review, a survey will be emailed to you and you can take the survey online. The survey is conducted by the Docking Institute of Public Affairs at Fort Hays State University and is anonymous and confidential. Your participation in the review process is important! More information on Judicial Performance Review can be found at www.azjudges.info.

La Constitución de Arizona exige que la Comisión de la Evaluación del Desempeño Judicial realice evaluaciones de desempeño de los jueces de los tribunales superiores. La comisión pide su ayuda para evaluar a los jueces del Tribunal Superior del Condado de Maricopa a quienes actualmente se les está evaluando su desempeño. Después de su audiencia, si el juez ante el cual comparece está sometido a una evaluación se le enviará por correo electrónico una encuesta que

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usted podrá tomar por Internet. La encuesta es realizada por el Docking Institute of Public Affairs de la Fort Hays State University y se mantiene anónima y confidencial. ¡Su participación en el proceso de la evaluación es importante! Para obtener más información sobre la evaluación del desempeño judicial, diríjase a www.azjudges.info.