

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2018-014261

07/27/2020

HONORABLE JOSEPH P. MIKITISH
FOR HON. PAMELA GATES

CLERK OF THE COURT
C. Lacey
Deputy

JASON KOMOROWSKI, et al.

E JEFFREY WALSH

v.

WHISPER MOUNTAIN HOMEOWNERS
ASSOCIATION

BRADLEY R JARDINE

JUDGE GATES
JUDGE MIKITISH

FAIR LIMITS PROCEEDING SET

At the request of the parties,

IT IS ORDERED directing parties to attend the Fair Limits Proceeding on **August 6, 2020 at 10:30 a.m. (30 minutes allotted)** along with their counsel, or be available to discuss matters during the Proceeding.

Participants shall join the hearing by using the GoToMeeting videoconference platform. The access information is as follows:

<https://global.gotomeeting.com/join/843127237>

A participant can also access the hearing by telephone using the following information:

United States: +1 (872) 240-3412

One-touch: <tel:+18722403412,,843127237#>

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Access Code: 843-127-237

The parties' memorandum should: 1) identify the title and filing date of any previously filed pleadings the party deems important to evaluating the trial or settlement posture of the case; 2) attach any key evidence or other memoranda the party deems essential to understanding how to resolve the case; and 3) set forth a summary of the parties' agreement, if any, or the party's position regarding whether the case should proceed to trial.

At the Fair Limits Proceeding, if the parties desire trial, the parties should be prepared to discuss methods to streamline the proofs, claims, and trial procedures, including but not limited to:

- (1) Elimination of claims or defenses;
- (2) Waiver the right to jury trial and consent to a bench trial before any judicial officer currently assigned to the civil department;
- (3) Limitation on the number of witnesses and the length of time they will be examined, including in conjunction with agreements to foreclose lines of questioning or objections so the trial can run most smoothly with remote or video components;
- (4) Limitation on the length of trial to specified numbers of days or hours;
- (5) Limitation on the number of jurors;
- (6) Feasibility of written opening statements and/or closing arguments;
- (7) Submission of testimonial excerpts by video or text in lieu of live testimony;
- (8) Presentation of expert testimony via report or deposition, either barring live examination or limiting it to cross and redirect of the expert;
- (9) Waiver of rights to post-trial motions, to appeal, or to recover attorneys' fees;
- (10) Limitation the range of potentially available recoveries to a high and low number;
- (11) Limitation on the outcome of the dispute to either of two numbers, with the question to be tried being whether the higher or lower number better approximates the dispute's true value as determined by the trier of fact (known as "baseball arbitration"); or
- (12) Anything else that serves efficiency that the Court, Fair Limits Officer, or parties believe is appropriate to discuss.

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If the parties wish to resolve their dispute on the merits but not through trial, the parties should be prepared to discuss reasonably available alternatives to trial, including:

- (1) Trial to either one or three neutral arbiters drawn from the list of Late Case Fair Limits Officers, including the case's Fair Limits Officer;
- (2) A summary trial of issues of fact to a virtual jury or in-person jury followed by a settlement conference;
- (3) Trial of the case to the bench, but with an advisory jury to make recommended findings of fact consisting of one or three neutral arbiters who are not presently judges drawn from the list of Late Case Fair Limits Officers or a virtual jury;
- (4) Submission of the entire case, or almost all of the case, as a paper trial or with video excerpts, based on briefing and only such small amounts of live testimony as are deemed vital to be heard live;
- (5) Participation in a virtual settlement conference under Ariz. R. Civ. P. 16.1, in which all parties have consented to *ex parte* communications before and during the conference pursuant to Ariz. R. Civ. P. 16.1(f), appearance by video is deemed to satisfy the attendance requirement in Ariz. R. Civ. P. 16.1(c), and the settlement judge assigns the parties separate virtual meeting rooms and controls the virtual rooms throughout the conference;
- (6) Binding or non-binding private mediation;