

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2010-091813

09/20/2013

HONORABLE LISA DANIEL FLORES

CLERK OF THE COURT
S. Uppendahl
Deputy

VINCENT QUIROZ, et al.

STEVEN C DAWSON

v.

ARCH INSURANCE COMPANY, et al.

JEREMY E BEAL
CHARLES M CALLAHAN
THOMAS L HUDSON
JOHN W SHAMBLIN

UNDER ADVISEMENT RULING

The Court heard argument on two motions for leave to name Attorney Mark Breyer as a non-party at fault. Defendant Arch Insurance Company filed its motion on June 19, 2013 and Defendant Jones, Skelton & Hochuli filed its motion July 11, 2013. Responses and replies were filed to each motion. After considering the written and oral arguments, the Court finds as follows.

Both defendants sought to name Plaintiffs' prior attorney, Mark Breyer, as a non-party at fault on the theory that Breyer's delays contributed to Plaintiffs' alleged damages. The parties agreed that Breyer likely would be a witness at trial regardless of the outcome of the pending motions. At the end of the argument, Plaintiffs' counsel stated that the elements of the tort of bad faith capture the reasonableness of Defendants' conduct; in other words, whether Defendants were reasonable in light of all the circumstances including Breyer's actions. Defendants stated that there was no need for a non-party at fault designation if Breyer's actions are attributable to Plaintiffs and his alleged delays cannot be held against Defendants.

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The Arizona Supreme Court made it very clear that the attorney-client relationship is governed by principles of agency law, and acts of the agent within his apparent authority are binding on the principal. *Panzino v. City of Phoenix*, 196 Ariz. 442, 447, 999 P.2d 198, 203 (2000). Breyer's conduct is attributable to Plaintiffs, and the jury will be so instructed as part of any comparative fault instruction that is given.

IT IS ORDERED denying Defendants' motions for leave to name Attorney Mark Breyer as a non-party at fault.

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.