

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2005 FEB 10 P11 3:53

JENNIFER H. GLENN

BY: 

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8 **IN THE SUPERIOR COURT OF ARIZONA**
9 **COUNTY OF YAVAPAI**

10 **JOHN B. CUNDIFF and BARBARA C.)**
11 **CUNDIFF, husband and wife; BECKY NASH,)**
12 **a married woman dealing with her separate)**
13 **property; KENNETH PAGE and KATHRYN)**
14 **PAGE, as Trustee of the Kenneth Page and)**
15 **Catherine Page Trust,)**
16 **Plaintiffs,)**
17 **vs.)**
18 **DONALD COX and CATHERINE COX,)**
19 **husband and wife,)**
20 **Defendants.)**

Case No. CV 2003-0399

Division 1

PLAINTIFFS' OBJECTION TO
DEFENDANTS' SUPPLEMENTAL
AUTHORITIES
RE: PLAINTIFFS' MOTION
IN LIMINE
REGARDING DEFENDANTS'
INTRODUCTION OF LAY WITNESS
OPINION TESTIMONY

21 Plaintiffs, John and Barbara Cundiff, Becky Nash, and Kenneth and Kathryn Page, by and
22 through undersigned counsel, hereby oppose Defendants' impermissible filing of a purported
23 "supplemental authorities" concerning Plaintiffs' motion *in limine* to preclude Defendants' from
24 introducing lay witness testimony on an ultimate issue of fact.

25 The purpose of filing supplemental authorities with a court is to bring to the court's attention
26 recently discovered pertinent authorities or judicial decisions released subsequent to completion of
briefing on the matter that directly bear on the issues before the court. Supplemental authorities are
not a vehicle to re-urge argument or case law that could have, or should have, been argued by the party
in its moving papers or oral argument.

In this instance, Defendants' supplemental authorities is a thinly veiled attempt to re-argue

DIV. 1
FEB 11 2005

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1 matters already fully briefed and orally argued to the Court. Defendants are impermissibly attempting
2 to raise a sur-rebuttal argument. This is not permitted under Arizona's rules of civil procedure.

3 Therefore, Plaintiffs request that this Court refuse to allow Defendants to again argue that
4 which they have fully had an opportunity to assert to this Court. Defendants have had ample
5 opportunity to raise argument and persuasive authority to the Court, and having failed to do so in a
6 manner proscribed by the rules of civil procedure, cannot attempt to do so now under the guise of
7 filing "supplemental authority" with the Court.

8 RESPECTFULLY SUBMITTED this 10th day of February, 2005.

9 FAVOUR MOORE & WILHELMSSEN, P.A.

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By



David K. Wilhelmsen
Marguerite Kirk
Attorneys for Plaintiffs

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Original of the foregoing filed
this 10th day of February, 2005 with:

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Clerk, Superior Court of Arizona
Yavapai County
120 S. Cortez St.
Prescott, Arizona 86302

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A copy hand-delivered this 10th day of February, 2005 to:

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Honorable David L. Mackey
Division One
Superior Court of Arizona
Prescott, Arizona

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and, a copy mailed this 10th day of February, 2005 to:

22

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