

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 1999-009334

11/30/2004

HON. PAUL A KATZ

CLERK OF THE COURT
B. Navarro
Deputy

FILED: 12/06/2004

ALLAN WACHTER, et al.

DAVID C TIERNEY

v.

JOHN LEZDEY, et al.

DAVID PAUL BROOKS

DOUGLAS J ROVENS
ZELLE HOFMANN VOELBEL MASON
& GETTE LLP
660 S FIGUEROA ST STE 1910
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DARREN LEZDEY AND
JARETT LEZDEY AND
NOREEN LEZDEY
4625 E BAY DR STE 302
CLEARWATER FL 33764
DARREN LEZDEY AND
JARETT LEZDEY
148 MARKDALE BLVD
INDIAN ROCKS BEACH FL 33785

MINUTE ENTRY

The Court having reviewed Plaintiffs' Motion to Clarify Record; the memoranda of the parties filed incident thereto; the Court having further reviewed its Under Advisement Ruling of August 24, 2004 in its entirety; and good cause appearing,

IT IS ORDERED granting Plaintiffs' Motion and correcting the three areas noted by the Plaintiffs to be contained in said ruling as follows:

- 1) The 4th paragraph on page 2 of the Under Advisement Ruling should read as follows:

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In or about August 1999, Dr. Wachter hired Spinelli to investigate the Lezdey's premised upon security concerns. At the time of this hiring, Spinelli was doing unrelated work for the Sacks Tierney firm. George Spinelli, the owner of Spinelli Investigations, was introduced to Dr. Wachter by attorney Yavitz at the Sacks Tierney firm.

2) Paragraph 2 on page 3 of this ruling should read as follows:

In or about November 2000, Wachter again asked Spinelli to resume its investigation of Lezdey. During this latter investigation, Spinelli, through its Florida agents, obtained a list of questions that Lezdey intended to ask Dr. Wachter at Dr. Wachter's deposition. This list of questions was obtained after the taking of such deposition and was subsequently shared with Dr. Wachter. During this latter investigation, Spinelli also recovered from the trash some handwritten pleadings prepared by John Lezdey, a letter from a consulting attorney to John Lezdey with a draft of a counterclaim, and a draft of AlphaMed's business plan.

3) Paragraph 3 on page 3 of this ruling should read as follows:

This Court concludes that the draft questions, communications between John Lezdey and his attorneys, and any draft pleadings remain confidential or attorney/client privileged, even though they were discarded in the trash. The Arizona case law is clear that one does not lose the attorney/client privilege unless the client intends to waive the same. However, there is no competent admissible evidence before this Court to suggest that the attorney/client privileged information was ever shared by Allan Wachter directly or the substance thereof with counsel, Tierney.

IT IS FURTHER ORDERED affirming this Court's September 30, 2004 denial of Lezdey's Motion for Reconsideration.

IT IS FURTHER ORDERED denying Lezdey's request to stay these proceedings pending the hearing of his Special Action.