

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

LAW OFFICES  
**BROENING OBERG WOODS & WILSON**  
PROFESSIONAL CORPORATION  
1630 SOUTH STAPLEY DRIVE  
SUITE 210  
MESA, ARIZONA 85204  
(602) 271-7700

Michael J. Ryan, #017467  
Carrie H. Smith, #022701  
Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

SWA Painting, Inc.,

Plaintiff,

vs.

Golden Eagle Insurance Corporation;  
Does 1-100; XYZ Corporations 1-100;  
Black and White Business Entities 1-100,,

Defendants.

NO. CIV-03-2364-PHX-DGC

**JOINT PRE-HEARING  
MEMORANDUM**

The parties, through undersigned counsel, submit the following pre-hearing memorandum for the Court's information.

**I. WITNESSES, TIME ESTIMATES**

A. Plaintiff intends on calling the following witnesses:

1. Stephen Anderson- 1 hour
2. Chris Gooch- 30 min
3. Roger Rowley- 30 min
4. Dan Trevino- 15 min
5. Howard Fisher- 15 min

B. Defendant intends on calling the following witnesses:

1. Stephen Anderson - 1 hour



- 1 67. Correspondence from Ms. Levy to Ms. Smith dated February 11, 2003  
2 (BATES: GE0131)
- 3 71. (Already listed by Defendant)
- 4 72. (Already listed by Defendant)
- 5 74. Correspondence from Mr. Gooch to Mr. Virgadamo dated September  
6 21, 2001  
7 (BATES: GE0175-GE0177)
- 8 75. Correspondence from Mr. Virgadamo to Mr. Gooch dated October 11,  
9 2001  
10 (BATES: GE0181-GE0182)
- 11 76. Correspondence from Mr. Gooch to Mr. Virgadamo dated September  
12 21, 2001  
13 (BATES: GE0184-GE0186)
- 14 77. Correspondence from Mr. Virgadamo to Mr. Gooch dated August 30,  
15 2001  
16 (BATES: GE0188-GE0190)
- 17 78. Correspondence from Mr. Gooch to Mr. Virgadamo dated August 1,  
18 2001  
19 (BATES: GE0191-GE0193)
- 20 79. Correspondence from Mr. Virgadamo to Mr. Rowley dated June 21,  
21 2001  
22 (BATES: GE0196-GE0199)
- 23 88. Correspondence from Ms. Levy to Ms. Halferty dated July 30, 2003  
24 (BATES: GE0073-GE0074)
- 25 89. Plaintiff's Initial Rule 26.1 Disclosure Statement  
26 (BATES: PD001-PD009)
90. Correspondence from Mr. Wall to Mr. Ryan dated October 14, 2002  
(BATES: CORR-0162)
91. Correspondence from Mr. Agena to Ms. Levy dated March 27, 2003
- B. Defendant intends on utilizing the following exhibits in addition to  
certain Plaintiff's exhibits that Plaintiff has already listed, as noted  
below.
1. (Already listed by Plaintiff)

- 1 2. (Already listed by Plaintiff)
- 2 17. Correspondence from Mr. Ryan to Ms. Levy dated November 25, 2002  
3 (BATES: CORR0398-CORR0399)
- 4 18. Correspondence (2) from Ms. Levy to Mr. Ryan dated February 11,  
5 2003  
6 (BATES: CORR0391-CORR0392)
- 7 33. Correspondence from Mr. Ryan to Ms. Levy dated February 26, 2003  
8 (BATES: CORR0106)
- 9 51. Correspondence from Ms. Levy to Ms. Hall dated September 17, 2003  
10 (BATES: GE0034)
- 11 52. Correspondence from Ms. Halferty to Ms. Hall dated September 19,  
12 2003  
13 (BATES: GE0036-GE0038)
- 14 71. Correspondence from Mr. Wall to Mr. Virgadamo dated October 14,  
15 2002  
16 (BATES: GE0148)
- 17 72. Correspondence from Mr. Virgadamo to Mr. Gooch dated October 16,  
18 2002  
19 (BATES: GE0149-GE0150)
- 20 73. Correspondence from Mr. Gooch to Mr. Virgadamo dated September  
21 20, 2002  
22 (BATES: GE0163)
- 23 75. (Already listed by Plaintiff)
- 24 76. (Already listed by Plaintiff)
- 25 77. (Already listed by Plaintiff)
- 26 78. (Already listed by Plaintiff)
79. (Already listed by Plaintiff)
80. Correspondence from Mr. Virgadamo to Coatings Management  
Systems, Inc. dated June 6, 2001  
(BATES: GE0200)
91. (Already listed by Plaintiff)
101. Policy and underwriting documents (BATES: GE10097-GE10219)
104. Draft letter re: Settlement and amendment to Damron Agreement dated  
June 2002. Sets forth payment schedule (BATES: GE0084-GE0085)

- 1 108. Pleadings filed in cause number CV2002-017502, *SWA v. Coatings*  
2 *Management Systems, Inc., et al.*
- 3 108a. Complaint
- 4 108b. Answer
- 5 108c. Defendant's Notice of Objection to Finalization of Damron Agreement
- 6 108d. Minute Entry dated July 24, 2003
- 7 108e. Defendant's Motion to Compel
- 8 108f. Stipulation for Entry of Judgment Pursuant to Damron Agreement and  
9 Addendum
- 10 108g. Judgment
- 11 108h. Motion to Set Aside Judgment
- 12 108i. Supplement to Defendant's Motion to Set Aside Judgment
- 13 108j. Response to Defendant's Motion to Set Aside Judgment
- 14 108k. Motion to Withdraw Defendant's Motion to Set Aside Default
- 15 108l. Motion to Intervene
- 16 108m. Response to Golden Eagle Insurance Company's Motion to Intervene
- 17 108n. Golden Eagle Insurance Company's Reply to Plaintiff's Response to  
18 Its Motion to Intervene
- 19 108o. Minute Entry dated April 19, 2004
- 20 110. Response to Defendant's Requests for Admissions to Plaintiffs dated  
21 July 7, 2004
- 22 111. Correspondence from Christopher Gooch to John Virgadamo dated  
23 September 21, 2001  
(BATES: CORR0114-CORR0116)
- 24 112. Correspondence from Christopher Gooch to Michael Ryan dated  
25 November 9, 2001  
(BATES: CORR0189)
- 26 113. Email from Christopher Gooch to Michael Ryan dated November 20,  
2001  
(BATES: CORR0188)
114. Email from Michael Ryan to Christopher Gooch dated November 27,  
2001  
(BATES: CORR0187)

- 1 115. Email string from Michael Ryan to Christopher Gooch dated March 14,  
2 2002  
(BATES: CORR0184)
- 3 116. Correspondence from Michael Ryan to Christopher Gooch dated  
4 September 10, 2002  
(BATES: CORR0164)
- 5 117. Correspondence from Donald Wall to Michael Ryan dated October 14,  
6 2002  
(BATES: CORR0147)
- 7 118. Correspondence from Michael Ryan to Donald Wall dated October 21,  
8 2002  
(BATES: CORR0148 - CORR0149)
- 9 119. Correspondence from Michael Ryan to Donald Wall dated October 21,  
10 2002  
(BATES: CORR0144)
- 11 120. Correspondence from Michael Ryan to Ellen Levy dated October 28,  
12 2002  
(BATES: CORR0142 - CORR0143)
- 13 121. Correspondence from Michael Ryan to Joel Agena dated February 24,  
14 2003  
(BATES: CORR0198- CORR0204)
- 15 122. Email from Joel Agena to Michael Ryan dated June 2, 2003  
(BATES: CORR0090)
- 16 123. Correspondence from Michael Ryan to Joel Agena dated June 11, 2003  
(BATES: CORR0083 - CORR0087)
- 17 124. Correspondence from Robert Wall dated June 25, 2003  
(BATES: DAMAGE006 - DAMAGE007)
- 18 125. Email from Joel Agena to Michael Ryan dated June 16, 2003  
19 (BATES: CORR0082)
- 20 126. Email from Joel Agena to Michael Ryan dated July 22, 2003  
(BATES: CORR0081)
- 21 127. Correspondence from Joel Agena to Michael Ryan dated July 23, 2003  
22 (BATES: CORR0077 - CORR0080)
- 23 128. Email string from Joel Agena to Michael Ryan dated August 8, 2003  
(BATES: CORR0076)
- 24 129. Correspondence from Michael Ryan to Joel Agena dated August 11,  
25 2003  
(BATES: CORR0070 - CORR0075)
- 26

- 1 130. Correspondence from Chesica Hall to Michael Ryan dated September  
2 9, 2003  
(BATES: CORR0058 - CORR0060)
- 3 131. Correspondence from Chesica Hall to Denise Halferty dated September  
4 10, 2003  
(BATES: CORR0054 - CORR0055)
- 5 132. Correspondence from Steve Davis dated January 21, 2004  
(BATES: DAMAGE008)
- 6 133. Plaintiff's Initial Disclosure Statement in *SWA Painting, Inc. v. Golden*  
7 *Eagle Ins. Corp.*, CIV-03-2364-PHX-DGC.
- 8 134. SWA Painting, Inc. Tax Return for the year 2000
- 9 135. SWA Painting, Inc. Tax Return for the year 2001
- 10 136. SWA Painting, Inc. Tax Return for the year 2002
- 11 137. SWA Painting, Inc. Tax Return for the year 2003

12 **III. STIPULATIONS**

13 The parties agree to the following stipulations:

- 14 1. For the purpose of this hearing, all objections to foundation of exhibits are  
15 waived. Further, the parties stipulate to the admissibility of all exhibits with  
16 the following exceptions:

<u>Exhibit</u>	<u>Objection by</u>	<u>Grounds</u>
134 through 137	Plaintiff	Relevance
108, all subparts other than (a), (b), (f) and (g)	Plaintiff	Relevance
2	Defendant	Hearsay

- 23 2. Any waivers of other objections to exhibits that were previously made in the  
24 Trial Exhibit List to the Proposed Joint Pretrial Order are for the purposes of  
25 this hearing only.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

BROENING OBERG WOODS & WILSON, P.C.

By s/Carrie H. Smith  
Michael J. Ryan  
Carrie H. Smith  
1630 South Stapley Drive  
Suite 210  
Mesa, Arizona 85204  
Counsel for Plaintiff

JONES SKELTON & HOCHULI, P.L.C.

By s/Neil Singh  
Donald J. Myles  
Neil Singh  
2901 North Central Avenue, Suite 800  
Phoenix, Arizona 85012  
Counsel for Defendant

**JOINT PRE-HEARING MEMORANDUM**

electronically filed/served  
this 25<sup>th</sup> day of October, 2005, to:

ALL PARTIES ON ELECTRONIC  
SERVICE LIST

AND A COPY mailed this \_\_\_ day  
of October 25, 2005, to:

Carrie Smith, Esq.  
Michael J. Ryan, Esq.  
BROENING OBERG WOODS WILSON & CASS  
1630 South Stapley, Suite 210  
Mesa, Arizona 85204  
Attorneys for Plaintiff

Terry A. Dake, Ltd.  
11811 North Tatum Blvd.  
Suite 3031  
Phoenix, Arizona 85028-1621

/s/: Mica Milano