

1 Donald L. Myles, Jr., Bar #007464
Neil Singh, Bar #021327
2 **JONES, SKELTON & HOCHULI, P.L.C.**
2901 North Central Avenue, Suite 800
3 Phoenix, Arizona 85012
(602) 263-1743
4 dmyles@jshfirm.com
nsingh@jshfirm.com

5 Attorneys for Defendant

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

8 SWA Painting, Inc.

9 Plaintiff,

10 v.

11 Golden Eagle Insurance Corporation; Does
12 1-100; XYZ Corporations 1-100; Black
and White Business Entities 1-100,

13 Defendants.

No. CIV-03-2364-PHX-DGC

**PARTIES' STIPULATED MOTION
RE CASE MANAGEMENT**

14
15 The parties, Plaintiff SWA Painting, Inc. and Defendant Golden Eagle
16 Insurance Company, respectfully stipulate and request this Court to enter its order in
17 accordance with an agreement reached by the parties as described below.

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 This is a state court action removed to federal court arising out of a dispute
20 over insurance coverage and allegations of bad faith. After considering motions for
21 summary judgment and conducting an evidentiary hearing, this Court has ruled that, *inter*
22 *alia*, (1) Defendant does provide coverage for Plaintiff's claims against Defendant's
23 insured; and (2) the stipulated judgment of \$500,000 obtained by Plaintiff against the
24 insured is a valid *Damron* judgment that is not subject to challenge by Defendant through
25 a reasonableness hearing. The remaining substantive issues are whether Defendant
26 committed bad faith, and whether Defendant's actions or omissions warrant the imposition
of punitive damages.

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

Defendant wishes to appeal the findings of this Court to the Ninth Circuit Court of Appeals. Plaintiff wishes to resolve the appellate issues as quickly as possible. To meet these objectives, both parties find it within their mutual interests to dismiss, without prejudice, Plaintiff's claims against Defendant for bad faith and for punitive damages. In exchange, Defendant is willing to waive any statute of limitations defenses to these claims. Plaintiff will retain the option to refile these claims after the resolution of Defendant's appeal, should it appear prudent to so at that time. Without waiving any rights, Plaintiff notifies the Court that it is highly unlikely that Plaintiff will exercise the option of refiling these claims.

The parties agree that Plaintiff may then file for entry of judgment against Defendant and any appropriate motions, including amounts Plaintiff believes it is entitled to for attorney fees, interest, and other costs. Defendant will then have the right to file an objection or objections to Plaintiff's form of judgment and amounts sought in attorney fees, interest and other costs, in accordance with the federal rules of civil procedure and District of Arizona Local Rule 58.1.

Accordingly, the parties jointly request the Court to dismiss Plaintiff's claims for bad faith and punitive damages against Golden Eagle without prejudice. The parties further request the Court to issue an order providing that Plaintiff shall file a form of judgment within 10 days from the date this motion is granted.

. . .
. . .
. . .

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

RESPECTFULLY SUBMITTED this 16th day of December, 2005.

JONES, SKELTON & HOCHULI, P.L.C.

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

BROENING OBERG WOODS WILSON &
CASS

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

PARTIES' STIPULATED MOTION
RE CASE MANAGEMENT electronically
filed/served this 16th day of December, 2005, to:

ALL PARTIES ON ELECTRONIC
SERVICE LIST

/s/: Mica Milano