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ARIZONA

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An aerial photograph of a river winding around a large, isolated rock formation in a desert canyon. The sun is setting behind the formation, creating a bright lens flare. The sky is filled with colorful clouds in shades of orange, yellow, and purple. The river is a deep blue, and the surrounding canyon walls are reddish-brown.

Top 10 Civil Verdicts

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An aerial photograph of a river winding through a deep canyon. The river is a vibrant blue-green color, contrasting with the reddish-brown and tan rock walls of the canyon. A large, prominent rock formation with distinct horizontal layers stands in the middle of the river's path. The sky is blue with scattered white clouds. The text "Arizona's Civil Verdict" is overlaid on the bottom right of the image in a white, serif font.

Arizona's Civil Verdict

Arizona

is an exquisite
place to live.

Brilliant sunshine, gorgeous sunsets, bright blue skies, scenic southwestern mountains, and desert flowers abound. Clients and friends love to visit, winter coats and umbrellas are for travel, and spectacular outdoor adventures can be done every day. When you fly into Phoenix at night, the city rises into wondrous view, glittering like jewels in the dark desert.

It's also a splendid place to work in law.¹

Arizona is a truly open legal community, because almost everyone moved here from somewhere else. It's a small legal world with a collegial bar. The state has a diverse and deep bench of smart and practical judges. Arizona turned 100 in 2012, and it's exciting to be part of shaping the cases and laws of this relatively young state. All of the verdicts you're about to read about are now a part of that history.

In 2012, personal injury cases dominated the largest Arizona verdicts. A driver involved in a multiple-vehicle collision on a Phoenix highway and who was rendered a quadriplegic claimed the top verdict of \$30.6

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Arizona's Civil Verdicts 2012

million.² Also among the highest Arizona verdicts were four medical malpractice cases by patients who alleged that their doctors failed to diagnose conditions properly, two injury cases brought by train conductors against a railroad, a claim by parents for their adult son who crashed into a tractor-trailer, and borrowers who prevailed on a counterclaim against their lender. The most unusual fact about the largest Arizona verdicts in 2012 is that there were so many hefty medical malpractice verdicts, a trend that was also observed nationwide.

The "top ten" Arizona verdicts stayed in a lower range than they have in some recent years. There were only two verdicts of more than \$10 million. There were twenty-four verdicts between \$1 million and \$10 million.

Nationally, the largest award in 2012 was for nearly \$1.17 billion in Pennsylvania, recovered by Carnegie Mellon University against Marvell Technology Group Ltd. for willful infringement of two patents related to integrated circuit technology.³ Apple Inc. received a widely-publicized California verdict of \$1.05 billion (the second-highest nationally) against Samsung Electronics over patents for Smartphones and tablets. The largest individual recovery was for \$716.5 million in a Florida verdict against a convenience store for selling alcohol to a teenager who crashed into a parked car and killed its driver. Verdicts between \$179.7 million and \$109 million were also handed down in individual cases in California, New York, Alabama, Louisiana, Illinois and Pennsylvania.⁴

Intellectual property cases have in recent years had the largest verdicts nationally, and they represented the largest category in number and dollar value in 2012.⁵ Medical malpractice cases were up in number and size nationally, including the largest for \$178.4 million in Florida.

As ever, this article focuses on verdicts given at trial by Arizona juries and judges. Please see the **endnotes** for any notable post-verdict activity or appeals as of the time we went to press.⁶ The case numbers are also listed with the case name, and online dockets are available if you want to look at the post-trial lawyering in more depth or see who the lawyers were.⁷ The focus is on how the Arizona juries decided these cases, and what they awarded.

Top 10 Largest Verdicts in Arizona

1

\$30,600,000

Alan Pribble et al.⁸ v. Jose Gonzales,
Maricopa County Superior Court,
CV2010-000131

This was a catastrophic injury case that arose from a multiple-vehicle freeway collision. On January 7, 2008, Jose Gonzalez was merging his pickup truck onto the 101 Highway. Julian Garcia was driving a flatbed truck for Sun Belt Rentals. The main liability question was essentially which of those trucks hit the other. Garcia asserted that he was always in the far right lane and that Gonzalez merged into his truck and then overcorrected to the right. After the first collision, Gonzalez crashed into the barrier wall and was then redirected to the left, which caused him to crash into Alan Pribble's vehicle. Pribble then hit another vehicle, rolled over the center cable barriers and into oncoming traffic, where he was struck by an oncoming vehicle. Pribble, a 50-year-old golf course superintendent, was rendered a quadriplegic. Pribble and his family claimed past and

future medical expenses, lost earnings, pain and suffering and loss of consortium. The jury found Gonzalez 100 percent at fault and awarded \$25.6 million to Alan Pribble, \$3 million to his daughter, \$1 million to his son, and \$1 million to his mother. This was the 65th-highest verdict nationally, and the only one of Arizona's in the top 100 nationally.

2

\$13,218,000

Carrie Bachrach and Randolph Bachrach v. Covenant Transportation, Inc. and Alfred Simister,⁹ United States District Court for the District of Arizona, 10-00315

This was a wrongful death case, in which the only remaining plaintiffs were the divorced parents of 31-year-old Matthew Bachrach. Alfred Simister was driving a tractor-trailer for Covenant Transportation in the early morning hours of March 17,

2008. Simister lost control of the truck and it rolled over and blocked part of Interstate 10. Bachrach's car crashed into the tractor and he died instantly. The Bachrachs alleged that Simister drove while fatigued and failed to maintain his logbook, and that Covenant was negligent in its hiring of Simister. Covenant and Simister admitted negligence and the case was tried on damages. The jury awarded Carrie Bachrach \$9.5 million and awarded Randolph Bachrach \$3,718,000.

3

\$7,800,000

Diana Glazer et al.¹⁰ v. State of Arizona
Department of Transportation,
Maricopa County Superior Court,
CV2009-001261

The Glazer family was driving west on Interstate 10 on August 19, 2007. A driver on the opposite eastbound side, Melissa Sumpter, swerved to avoid a tractor-trailer and lost control, crossed through the medi-



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an and hit the Glazer van. Michael Glazer, 50, and Sydney Glazer, 6, died in the crash. The Glazer family claimed that a median barrier would have prevented the crossover accident. Arizona defended that the median was wide enough that no barrier was needed, that a median barrier would not have prevented the crash, and that Sumpter was at fault for the crash. The jury awarded Diana Glazer \$6.3 million and her two children \$750,000 each. The jury found Arizona 100 percent at fault.

4 **\$7,275,160**

Lori Sandretto v. Payson Healthcare Management, Inc.,¹¹ Gila County Superior Court, CV2010-00115

This was the largest of four medical malpractice top verdicts. After a meniscus tear to her knee, Lori Sandretto had knee surgery performed by Charles Calkins. After the surgery, she developed an infection in the knee and alleged that Calkins and his physician's assistant failed to diagnose or properly treat the infection for six weeks. The infection was ultimately identified as methicillin-resistant staphylococcus aureus (MRSA). She developed contractures, an abnormal gait and muscle loss, and requires a spinal pain pump. Payson Healthcare Management argued that the injuries existed before the infection and that her damages were less than \$1 million in value. Sandretto asked the jury to award her past and future medical expenses, lost earning capacity and lost household services, all of which totaled approximately \$3.5 million, plus at least the same amount for general damages. The jury awarded the special damages plus another 53 percent in general damages, for a total verdict of \$7,275,160.

5 **\$6,200,000**

*Rancho Tuscana L.L.C.*¹² v. *Guaranty Bank and Trust Company*, Maricopa County Superior Court, CV2010-005362

This was 2012's largest award on a counterclaim. In 2007, Rancho Tuscana LLC entered into two loan agreements that totaled \$9.5 million to buy and develop real property in Cave Creek, Arizona. The loans were personally guaranteed by David Ewell, Diane Ewell, Stewart Graf and Susan Graf. Guaranty Bank and Trust Company later took over managing the loans. In 2009, Rancho Tuscana defaulted on both loans and Guaranty Bank foreclosed. The bank filed suit, seeking the amounts due on the loans plus attorneys' fees and expenses, as well as a receiver for the property. The borrowers counterclaimed, asserting that Guaranty Bank misrepresented that there was no equity in the property, did not allow the borrowers the opportunity to sign loan extension documents, and had destroyed potentially relevant electronic documents. Guaranty Bank defended that it complied with its obligations under the contracts, acted in good faith, and did not make any misrepresentations. The jury awarded \$6.2 million to the borrowers on their counterclaim.

6 **\$6,000,000**

*Brenda Busch et al.*¹³ v. *Vishal Singh, Derek Von Haag and Kenneth Prebil et al.*, Maricopa County Superior Court, CV2007-005067

Jeffrey Hudson had quadruple bypass surgery at Banner Thunderbird Medical Center on February 20, 2006. He developed a tension hemothorax in the left lung, with the apparent source of the bleeding the left internal mammary artery. He died of cardiopulmonary arrest six days after the surgery. His daughters contended that his surgeons Derek Von Haag and Kenneth Prebil and his internist Vishal Singh were slow to respond to, diagnose and treat the bleed as Hudson's vital signs deteriorated. His daughters, who were 13 and 15 years old at the time of Hudson's death, alleged that they were placed in state custody and had to live in a group home and that they have ongoing emotional problems. Prebil defended that he was present to evaluate

potential abdominal problems and not Hudson's chest condition. Singh and Von Haag denied negligence and argued they did not cause Hudson's severe heart disease, his need for open-heart surgery, or his post-operative hemorrhage. The jury awarded \$3 million to each of Hudson's two daughters. The jury found Singh 44 percent at fault, Von Haag 15 percent at fault, Prebil zero percent at fault, and non-party Banner Thunderbird Medical Center 41 percent at fault.

7 **\$5,875,000**

*Jonathan Connolly et al.*¹⁴ v. *Michael Beck*, Maricopa County Superior Court, CV2009-025176

Cortney Connolly, a 32-year-old homemaker, was taken to Maryvale Hospital on March 17, 2008, due to severe abdominal pain. The Connolly family alleged that Beck, the emergency medicine physician, failed to timely diagnose and treat her for a bowel perforation. The hospital had only one surgeon on call, whom Beck contacted but could not quickly reach. There was also a 10-hour delay in obtaining a CT scan due to technician unavailability. Beck also defended that Connolly had a preexisting depressed immune system that prevented her from fighting infection.

Connolly died two days after she was admitted. The jury awarded her husband \$1.5 million, her two children \$2 million each, her father \$250,000 and her mother \$125,000. The jury found Beck 5 percent at fault and apportioned the remaining fault among three non-parties (hospital, on-call surgeon, and family practitioner).

8 **\$3,852,256**

*Joseph Winckler*¹⁵ v. *BNSF Railway Company*, Maricopa County Superior Court, CV2009-020785

Joseph Winckler, 32, worked for BNSF Railway Company as a conductor. Stepping



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down from a locomotive on May 27, 2007, in Winslow, Ariz., he stepped partially onto an exposed railroad tie, which caused him to twist his knee and ankle and fall. Winckler claimed BNSF violated the Federal Employers Liability Act and failed to provide a safe and uniform walkway. He alleged that BNSF should have had ballast (compacted crushed gravel and stone) or other material placed up to the top of the tie so as to provide a level surface. BNSF defended that the area where he was injured was not a walkway but rather part of the track structure. BNSF contended that Winckler failed to properly observe where he was stepping, failed to properly step down, and failed to properly use three points of contact in dismounting. BNSF also disputed the extent of his injuries and disability. The jury awarded \$3,852,256 and found Winckler to be 20 percent at fault.

9

\$3,700,000

Sara Jaynes et al.¹⁶ v. Marc Goldblatt et al., Maricopa County Superior Court, CV2011-070613

In 2007, 30-year-old Sara Jaynes was referred to colorectal surgeon Marc

Goldblatt for diagnosis and treatment of a rectal-vaginal lesion. Goldblatt referred Jaynes to a second colorectal surgeon, Elizabeth McConnell, who performed two transrectal ultrasounds. The medical records and ultrasound reports had varying descriptions for the lesion, including a hard nodule, a solid wall mass, and a cyst. Jaynes claimed McConnell told her it was a cystic lesion and did not need to be removed. No biopsy was done. In 2008, Jaynes saw her gynecologist Robert Newman for unrelated reasons that ultimately resulted in a hysterectomy and she told him about the colorectal workup. Jaynes developed more problems and was diagnosed by a third colorectal surgeon in 2011 with metastatic stage IV cancer throughout her body. Jaynes' oncology expert testified that the lesion was a stage I neuroendocrine rectal cancer back in 2007 and would have been curable then. Goldblatt defended that he recommended excising the cyst, that he was told in 2008 that Newman was going to remove the cyst and thereafter Goldblatt had no more responsibilities. McConnell defended that she was not managing Jaynes' case and merely provided the ultrasound analysis. Newman defended that Jaynes must have told him about the other doctors' workup, or otherwise he would not have done an elective hysterectomy.

The jury awarded \$1.7 million to Jaynes and \$1 million to each of her two children. The jury found Goldblatt 75 percent at fault and Jaynes 25 percent at fault.

10

\$3,000,000

Wes Davis¹⁷ v. BNSF Railway Company, Maricopa County Superior Court, CV2008-017741

This was the second railroad case. Wes Davis, 50, was a conductor for BNSF Railway Company. On September 11, 2005, he stepped away from a locomotive to perform a roll-by safety inspection of a separate passing train. He stepped down onto sloped ballast and lost his balance and fell. He sustained a tendon tear of his right ankle, which he asserted was a permanent injury and would require additional surgeries. Davis alleged that BNSF created an unsafe and dangerous work area by allowing the footing to be uneven and unstable. BNSF defended that Davis had performed these inspections hundreds of times and that his working conditions complied with all governmental and industry standards. Although the jury awarded \$3 million, it found Davis 95 percent at fault.



Plaintiffs Won 63 Percent of the Trials

Statewide, plaintiffs prevailed in 63 percent of the trials and defendants prevailed in 37 percent. In the past nine years, this statistical chance of prevailing in any given case has remained in a close statistical range. Plaintiffs' statistical percentage of prevailing has ranged from 56 percent to 66 percent over the past five years.

Federal court continued to have a higher statistical chance of success for defendants in its verdicts, as compared to state court. In the United States District Court for the District of Arizona in 2012, civil defendants prevailed in 56 percent of the reported verdicts. There were nine defense verdicts and seven plaintiff's verdicts. That was nearly a 20-point better chance of statistical success for defendants than in state

court. Based on past data, this is a solidly predictable expectation from year to year.

Venue Comparison

Jury awards consistently vary by county in

Arizona. Averages and medians¹⁸ of how much juries awarded in 2012 when they gave plaintiffs' verdicts in each venue are as follows. Here are those figures, as also shown on the map on page 22.

2012 Arizona Plaintiff's Verdict Averages by Venue			
Venue	Average Plaintiff's Verdict	Median Plaintiff's Verdict	Percentage of Trials Won by Plaintiffs
Statewide	\$846,127	\$60,000	63
Gila County	\$7,275,160	\$7,275,160	100
U.S. District Court	\$2,355,838	\$192,246	44
Maricopa County	\$826,467	\$57,500	64
Yavapai County	\$588,929	\$67,358	66
Cochise County	\$565,606	\$336,211	100
Yuma County	\$370,000	\$370,000	50
Santa Cruz County	\$199,142	\$107,425	100
Navajo County	\$129,387	\$129,387	50
Pima County	\$117,966	\$70,000	59
Pinal County	\$39,941	\$39,941	33
Coconino County	\$34,132	\$20,000	75



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The statewide average plaintiff's verdict¹⁹ in 2012 was \$846,127. The statewide median in 2012 was \$60,000. Sixty-eight percent of all the verdicts came from Maricopa County, which is one of the largest counties in the United States by population and by land area. The average of Pima County's plaintiff's verdicts in 2012 were among the lowest since we've been tracking them, at \$117,966. The outlying counties lean more conservatively and tend to return verdicts that are lower in value.

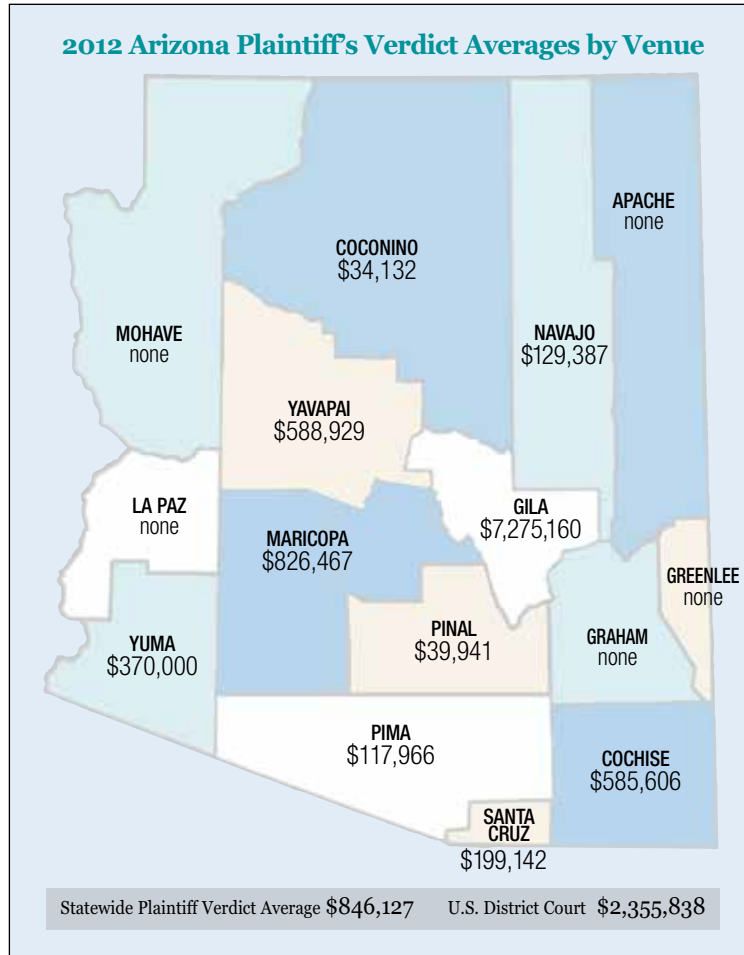
Mohave County reported one defense verdict. No verdicts for either side were reported out of Apache, La Paz, Graham or Greenlee counties.

Medical Malpractice Verdicts on the Rise

Four of the top ten 2012 verdicts were in medical malpractice cases. Those were the third, fourth, fifth and tenth largest medical malpractice verdicts that have ever been handed down over the past nine years in Arizona. That is a dramatic disparity with past years, in which defense verdicts have dominated this area. In 2004, the first year that I wrote this yearly verdicts article, I singled out medical malpractice as the area that had the most overwhelming percentage of defense verdicts (93 percent in that year).

Over the past nine years, there have been 214 defense verdicts in Arizona medical malpractice cases, or about 79 percent of the verdicts rendered. In that same time there have been 56 plaintiffs' verdicts.

This increase was also noted as a nationwide trend. There were 14 medical malpractice verdicts on the top 100 nationally, second only to intellectual property cases in quantity of awards.²⁰ Nationally, the average was noted to have jumped 140 percent.²¹ Between 2010 and 2012, at least six other states had what is believed to be their biggest-ever medical liability jury award.²²



20 to 30 percent fewer verdicts are being rendered than about five years ago (see chart p. 24).

Punitive Awards

Punitive damages were awarded in only eight cases in 2012. That is fewer than at the height of the recession, when punitive awards were being awarded most frequently. Juries generally follow Arizona and constitutional guidelines in awarding punitive damages. They tend to award them only when there are aggravating or extreme facts, and typically do not give awards in large multipliers.

The largest punitive award in 2012 in Arizona was for \$1.4 million. In that case, a company that financed leases of business equipment failed to deliver the equipment and plaintiffs alleged that the owner pocketed some of the

money and an employee took commissions on the fraudulent leases. Another punitive award for \$1 million was against a bookkeeper who stole more than \$800,000 by mishandling payroll tax for a client over four years. The other cases from 2012 included interference with businesses and contracts, a nuisance created by an animal enclosure, abuse of process, and false accusations made on a website.

Business Verdicts and Personal Injury Verdicts

The average business plaintiff's verdict was \$562,359, with a median of \$129,387. Such cases included breach of contract, breach of fiduciary duty, fraud, insurance bad faith, professional malpractice, condemnation and property damage. Of all of the business cases tried in 2012, plaintiffs won 73 percent of them and defendants won 27 percent.

The average plaintiffs' personal injury verdict was the highest in 2012 that it has been in any other recent year, at \$969,300,

Number of Verdicts Continues to Decline

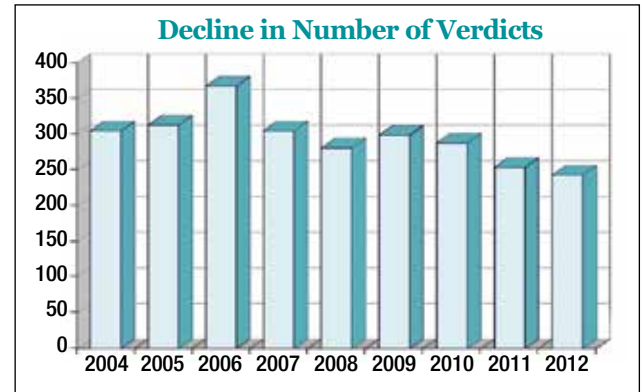
The number of Arizona cases that are tried all the way to verdict has been on a generally declining trend since 2007. Since 2009, the number of trials has declined by four to twelve percent each year. Roughly



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which makes sense given the scope of the largest verdicts. The median was also the highest of recent years, at \$49,200. The cases in this category had one or more person who was physically injured. They included motor vehicle accident injury, product liability, medical malpractice, excessive force, and wrongful death cases. These

kinds of cases made up about 73 percent of all the cases tried to verdict in 2012. Of all of the personal injury cases tried in 2012, plaintiffs won 56 percent of them and defendants won 44 percent.



Significant Defense Verdicts

In the interest of equal time and coverage, we highlight some noteworthy defense verdicts below. These are from a variety of different types of cases in which the claimed damages at trial were high. Here are a few of 2012's significant Arizona defense verdicts:

A *Barbara Sloan v. Farmers Insurance Company of Arizona, Farmers Insurance Exchange, and Farmers Group, Inc.*,²³ Maricopa County Superior Court, CV2009-033244

Barbara Sloan's home and two vehicles were burned in a fire in 2009, and she submitted an insurance claim for property damage to Farmers Insurance Company of Arizona. Sloan was charged with arson and insurance fraud, and she demanded Farmers' initial expert report that concluded the cause of the fire was undetermined. Farmers declined to give the report and stopped a payment that was in progress, but later paid the full claim after the charges against Sloan were dismissed.

Sloan claimed the fire was caused by an electrical malfunction and that it originated in a motor vehicle. She claimed that Farmers acted in bad faith when it attempted to underpay her claim and failed to produce exculpatory evidence that would have been helpful to her criminal defense. Sloan alleged that she sustained stress, humiliation, anxiety and depression and lost her job. She asked the jury to award \$2.3 million in compensatory damages, \$6.9 million for emotional distress, and \$31 million in punitive damages. Farmers defended that it had a reasonable belief that Sloan was involved in intentional burning of her prop-

erty, that her claim was handled properly, and that the fire did not originate in a vehicle but instead had multiple origins.

B *J.T. v. American Building Maintenance Industries, Inc. and Scottsdale Unified School District*,²⁴ Maricopa County Superior Court, PB2006-001894

A 14-year-old student was sexually assaulted and raped by a janitor when she returned to school after hours to retrieve books. She alleged that the Scottsdale Unified School District failed to provide adequate security, and that American Building Maintenance Industries negligently hired the janitor in spite of his criminal history. She alleged that she sustained lifelong psychological and emotional trauma and post-traumatic stress disorder. She asked the jury for \$20 million. Scottsdale Unified School District defended that its security was reasonable. American Building Maintenance defended that its hiring complied with the standard of care and federal law, and that the janitor had no history of violent crime.

C *Rosemary Everett and Ray Everett v. C.R. Bard, Inc. and Bard Peripheral Vascular, Inc.*,²⁵ Maricopa County Superior Court, CV2009-019232

In 2004, Rosemary Everett had a "Bard Recovery Filter" surgically implanted in her inferior vena cava for collection of blood clots. The filter allegedly fractured in 2007 when it punctured the aorta, and in 2011 when it pierced the aorta, spine and duodenum. Everett required surgical repair both times but otherwise had no permanent

effects. The Everetts alleged the filter had been inadequately tested, that the filter was defective due to unreasonably high stress on it, that the failures were due to fatigue, and that the filter had an excessively high failure rate. The Everetts asked the jury for \$5.5 million in compensatory damages plus punitive damages. Bard demonstrated that the filter was not defective and had been reasonably tested, that the filter's fracture rate was no more than the accepted industry average, and that the fractures came from atypical loading conditions. This was the first bellwether trial for a Bard filter of this type.

D *Universal Engraving, Inc. v. Metal Magic, Inc. and Charles Brown*,²⁶ United States District Court for the District of Arizona, 08-01944

Frederick Duarte worked for Universal Engraving, Inc. as head of research and development for 14 years. They had a non-compete agreement with confidentiality and nonsolicitation provisions. In 2007, Duarte went to work for Metal Magic, a competitor of Universal Engraving. Universal Engraving claimed that Metal Magic and its owner Charles Brown improperly obtained and used trade secrets and confidential information regarding its products and technologies, and unfairly competed. Universal Engraving sought injunctive relief and compensatory damages of \$3 million plus an unspecified amount in punitive damages. Metal Magic defended that the hiring of Duarte was proper, and that Metal Magic never obtained or used any trade secrets or confidential information belonging to Universal Engraving.



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E

Teresita Sliney v. Scottsdale Cardiovascular Center, P.C., Bradley Oswood, Scottsdale Obstetrics & Gynecology, P.C., and Eric Reuss, Maricopa County Superior Court, CV2007-002666

Teresita Sliney, 49, had a preoperative workup on February 17, 2005, which revealed an abnormal heart rhythm. The following day, she underwent a cardioversion, which converted her heart to a normal rhythm. The day after that she had the surgery, and during the next two days her heart reverted to the abnormal rhythm and she ultimately had a stroke. Sliney claimed that Oswood, a cardiologist, and Reuss, a gynecologist, failed to communicate appropriately regarding her condition. She also alleged safer alternatives would have prevented the stroke, that the standard protocol had not been followed, and that Reuss should not have performed surgery after Sliney exhibited a condition he had never before encountered. Sliney was disabled and unable to work, with residual right side hemiplegia, severely impaired language comprehension and expression, foot drop, spasticity in the upper right arm, and impaired gait and stamina. She asked for more than \$3 million. Oswood defended that no clot or other abnormal findings were seen during the workup and that Sliney had signed the consent. Reuss argued he relied on Oswood to diagnose and treat the abnormal rhythm. This was the fourth trial of the case after three others ended in mistrials.

F

Edward Harvey v. Navajo County et al.,²⁷ United States District Court for the District of Arizona, 10-08025

Navajo County Deputy Sheriff Jeff Adams stopped Edward Harvey in order to detain him until Deputy Sheriff Brenda Clark could serve two family court orders on him. Harvey claimed that Adams detained him at gunpoint, which Adams denied. He contended that the deputies and Ron Jones, Animal Control Officer, misrepresented their intention to search his home and euthanized his 50 dogs. Harvey alleged that the traffic stop was without reasonable suspicion, that his consent to search his home was coerced and illegal, and that the destruction of his dogs was illegal. Harvey

alleged he was jailed for approximately three weeks and sustained emotional trauma, and he asked the jury to award approximately \$3 million. Navajo County and the deputies defended that the traffic stop was legal because there was a reasonable suspicion Harvey had a concealed weapon without a permit and that he had previously threatened his family. They argued the search was consensual and voluntary, and that the destruction of the dogs was reasonable and to end their suffering.

G

Roger Ashkenazi v. Joseph Lee, Maricopa County Superior Court, CV2010-052206

Mortgages Ltd. was Arizona's largest private commercial lender until it went bankrupt and was exposed as a Ponzi scheme in 2008. Roger Ashkenazi was one of its investors. He alleged that Joseph Lee knew of the company's financial problems but failed to disclose them. Ashkenazi alleged he would never have invested in Mortgages Ltd. had he known the facts. He asked the jury to award him approximately \$2 million in investment losses. Lee, who was a retired securities salesman, defended that he had no knowledge of the company's financial problems when he sold securities to Ashkenazi. Lee argued that the investment losses were caused by the real estate market and borrowers' failure to repay mortgages.

Where Are They Now?

Following up on verdicts mentioned in last year's article, here are two that had appellate decisions recently:

Raymond Greenwood et al. v. Mepamsa and Camping World, Inc., Arizona Court of Appeals, CA-CV 11-0782

This was a significant defense verdict in 2011, in a product liability case for injuries to a family from a flash fire involving a catalytic heater. The Court of Appeals, in a memorandum opinion, held the trial court erred in its exclusion of certain expert testimony, admission of certain evidence concerning the heater's safety history, admission of evidence of Raymond Greenwood's history of domestic violence, and instruction to the jury that it could draw an adverse inference against the

Greenwoods based on spoliation of evidence. The case was remanded for a new trial.

Ronald Day et al. v. Amor Ministries and Central Christian Church, Arizona Court of Appeals, CA-CV 12-0059

This was a personal injury award for nearly \$6 million in 2011. The Court of Appeals affirmed the verdict for plaintiffs in a memorandum opinion. It held that the trial court did not err in admitting evidence of the Day's insurance coverage finances, in applying Arizona law, in declining an instruction regarding delayed production of photographs, and in declining a spoliation instruction.

There were no other appellate decisions out of 2011's top ten verdicts or those that were highlighted as significant defense verdicts.

Trends

This is the ninth year for this article, and we've reviewed and reported on about 2,600 verdicts. Here are some more observations on Arizona verdict trends.

Arizona's largest verdicts from 2012 looked most similar to those of 2005. The very largest verdicts peaked in size in 2007 and 2008 and those were also the years for the largest commercial verdicts. Verdicts at the top have declined in the years that have followed in size, and verdicts overall have declined in quantity. Punitive damages have remained rare throughout and were given most frequently in 2009. The statistical chance of prevailing as a plaintiff in any given case has ranged from 53 to 66 percent each year, and the nine-year average chance of winning as a plaintiff was 60 percent. The median plaintiff's verdict in commercial cases has stayed in a range of \$75,000 to \$250,000.

In celebration of its 2012 centennial, here is some law-related trivia about Arizona:

- Justice Sandra Day O'Connor grew up on a family ranch in Arizona, and the federal courthouse in Phoenix is named in her honor.
- Arizona is one of only a few states that allows jurors to ask questions during trials, both civil and criminal.
- Out of all the states in the United States, Arizona has the largest percentage of its land designated as Indian lands.



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- The Arizona Cardinals are the oldest continuous franchise in the NFL, dating back to 1898.
- Wyatt Earp was neither the town marshal nor the sheriff in Tombstone at the time of the famous gunfight between the Earps and the Clantons, and it didn't happen at the O.K. Corral.

Conclusion

When the State Bar of Arizona sent out its

yearly bar cards a few weeks ago, State Bar CEO John Phelps issued an inspiring call to action. He noted that although the news of late has been full of tragic killings, political battles and disastrous weather, we each have a unique role to play in tackling those challenges. He reminded us that we all have special skills as problem-solvers and advocates, and that service to the world is important. This yearly piece of writing is part of my contribution and I hope it continues to be helpful. I amplify John's terrific reminder

with this quote from Howard Thurman: "Don't ask what the world needs. Ask what makes you come alive and go do it. Because what the world needs is people who have come alive."

Please feel free to contact me any time for more details about the verdicts or to report significant ones that happen in the future. You're also invited to browse my firm's website (swlaw.com/attorneys/kelly_machenry) where you can find more of my publications and other good things. See you next year. 

endnotes

1. Much appreciation to the readers of this article for your positive comments and the encouragement to keep writing it. Thanks to editor Tim Eigo for a great collaboration over nine years and to Karen Holub for her creative artwork and graphics. My partners and colleagues at Snell & Wilmer L.L.P. continue to inspire me and are the nicest group of smart people that I have ever known. My extended family, including my pack of four-legged loved ones, is the best anyone could be blessed with. This article's dedicated to my parents Al and Judy Wilkins, who celebrated 50 years of blissful marriage in 2012.
2. This article analyzes 243 civil verdicts reported from the Superior Courts of Arizona and the United States District Court for the District of Arizona for the 2012 calendar year. Although the vast majority were jury verdicts, some were bench trials tried to a judge.
3. Amanda Bronstad, *IP Awards Dominate*, NAT'L L.J., Mar. 4, 2013.
4. Susan Bocamazo, *A Look Back at the Top Verdicts of 2012*, LAWYERS WEEKLY USA, Jan. 21, 2013.
5. Bronstad, *supra* note 3.
6. This article makes no comment on the merits of the claims or defenses in these cases, or the parties or specific lawyers involved. This article does not analyze or include cases that settled before or during trial, mistrials, stipulated judgments, judgments as a matter of law, or criminal cases. The verdicts as summarized do not include costs, fees or reductions that may have been established later. The parties listed are those who were active when the verdict was delivered. Significant post-verdict developments are in these endnotes. Because the focus of this article is on the verdicts, not all of the post-verdict activity is reported here.
7. PACER.gov for the federal system; superiorcourt.maricopa.gov for Maricopa County; agave.cosc.pima.gov for Pima County; and apps.supremecourt.az.gov for the other counties.
8. Other plaintiffs were Alan Pribble's son Brian Pribble, his daughter Amanda Pribble and his mother Cheryl Coleman. The claims against defendants Sunbet Rentals, Inc. and Julian Garcia were settled while the jury was deliberating. Jose Gonzales, a factory worker in his twenties, was *pro se* in the case and did not appear at trial.
9. Defendants' motion for summary judgment was granted as to punitive damages. Post-trial, defendants moved for remittitur and/or a new trial. The court granted the motion and gave plaintiffs the option of accepting a remittitur to \$1,600,000, which they declined in favor of a new trial. Plaintiffs' claims were bifurcated into separate trials. At the retrial, Carrie Bachrach settled her claim while the jury was deliberating. At the retrial of Randolph Bachrach's claim, the jury awarded him \$575,000.
10. Other plaintiffs were Michael and Diana Glazer's minor children Lindsay and David Glazer. Defendants' motion for a new trial was denied and an appeal is pending.
11. Defendant filed a motion for a new trial, which was denied, and has filed an appeal that is pending.
12. Other plaintiff/counter-claimants were David Ewell, Diane Ewell, Stewart Graf and Susan Graf.
13. Brenda Busch was special conservator for Hudson's daughters Jessica and Sarah Hudson. Other defendants were Valley Radiologists Ltd., Southwest Heart & Lung-Scottsdale PC, and Saguaro Medical Associates PC.
14. Other plaintiffs were Cortney Connolly's minor children Benjamin and Emma Connolly, and her parents Terry Larsen and Jann Loudin. Beck filed a motion for a new trial, which was denied.
15. BNSF has filed a motion for a new trial.
16. Other plaintiffs were Jaynes' children Seren Jaynes and Isaac Ruiz. Other defendants were Affiliated Colon and Rectal Surgeons PC, Elizabeth McConnell, Robert Newman and Paradise Valley Obstetrics & Gynecology Ltd.
17. Plaintiff filed a motion to amend the judgment or for a new trial only on the allocation of fault, which was denied. Plaintiff has filed an appeal that is pending.
18. To calculate an average for a particular county, we add up all the verdict totals where damages were awarded, then divide by how many plaintiffs' verdicts there were in that county. To calculate the median in a venue, we place the plaintiffs' verdicts in value order and find the middle number, where exactly half of those verdicts are higher and half are lower.
19. Average verdicts and median verdicts are computed from all plaintiffs' verdicts in the particular venue. Defense verdicts and reductions for comparative negligence or non-party fault are deliberately not factored into the analyses of averages and medians for the reasons noted above. If we included defense verdicts into that analysis, the average of all civil verdicts statewide in 2012 (both plaintiffs' and defense verdicts) would be \$536,228.
20. Bronstad, *supra* note 3.
21. *Id.*
22. Alicia Gallegos, *The Rise of Sky-High Jury Awards*, AMER. MED. NEWS, Jul. 16, 2012.
23. Plaintiff filed a motion for a new trial, which is pending.
24. Plaintiff is a minor so her name is not published here. Defendants offered \$1 million before trial. Post-trial, plaintiff petitioned for special action, which the Court of Appeals denied.
25. Plaintiffs filed an appeal, which was later dismissed without objection for lack of jurisdiction.
26. Plaintiff filed a motion for a new trial, which was denied. Plaintiff has filed an appeal that is pending.
27. Other defendants were K.C. Clark, Brenda Clark, Jeff Adams and Ron Jones. Plaintiff filed a motion for a new trial, which was denied. Plaintiff has filed an appeal that is pending.