

[www.azbar.org/AZAttorney](http://www.azbar.org/AZAttorney)

ARIZONA

# ATTORNEY

JUNE 2014

## Arizona's Civil

# TOP 10

## Verdicts 2013

**KELLY WILKINS MACHENRY** has written this feature for 10 years. Follow her verdict reports on Twitter @kellymachenary. A Partner with Snell & Wilmer L.L.P., Kelly advises, defends and tries cases about product liability, privacy and data security. She leads Snell & Wilmer's Consumer Product Safety team, which counsels businesses on regulations, warnings, and recalls. She is the editor of Snell & Wilmer's Product Liability Update. Write to her at kmachenary@swlaw.com.

The American jury system is exceptional and distinctive in the world. Most nations have no trial by jury, even in criminal cases. We've seen this on the global stage in high-profile cases recently in South Africa and Italy. Ninety percent of the world's jury trials take place in the United States.<sup>1</sup> The jury served as a rallying point for American colonists against unpopular and oppressive British laws. The right to a jury in civil cases was adopted in the Seventh Amendment to the Constitution in 1791.

The great majority of Arizona's civil verdicts are handed down by juries. Over the past 10 years of this annual article, it's interesting to see how Arizona civil verdicts have trended differently and yet how much has stayed consistently the same. I had the pleasure of trying two of 2013's cases in Arizona's federal court.

The largest 2013 Arizona verdict of \$12.123 million was in a medical malpractice case brought by a patient who claimed that a hospital lab failed to run a correct screening test and as a result she developed conditions that led to blindness.<sup>2</sup> Also among the highest Arizona verdicts were two insurance bad faith cases, a wrongful death case in which police failed to prevent a teenager from being shot by her ex-boyfriend, three cases about large loans, a motorcycle injury case, and an injury case brought by a train engineer against his railroad employer.

The "top 10" Arizona verdicts were much lower in 2013. From number 1 through 10, each was lower than in any other of the last 10 years. There was only a single verdict higher than \$10 million. There were 10 verdicts between \$1 million and \$10 million. More large verdicts came out of Pima County than ever before. Three of the top 10 verdicts were in

bench trials, tried to a judge and not a jury.

Nationally, the largest award in 2013 was for \$1.2 billion in Kansas, against The Dow Chemical Company in a case involving price-fixing of urethane.<sup>3</sup> A nursing home verdict of \$1.1 billion was awarded in a Florida case of insufficient staffing and supplies in care for a disabled senior. The second- and third-highest verdicts came from Florida. Other top recoveries were given in New Hampshire, Nevada, California, Texas, New York, Iowa and Delaware. The claims ranged from defamation, toxic torts, workplace negligence, intellectual property, motor vehicle, employment, product liability, and breach of contract. Medical malpractice cases were slightly down after an uptick nationally the previous year.

As ever, this article focuses on verdicts given in civil cases by Arizona juries and judges. Please see the endnotes for any notable post-verdict activity or appeals as of the time this article was posted and printed.<sup>4</sup> 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 or judges were.<sup>5</sup> The focus here is on how the Arizona juries and judges decided these cases, and what they awarded.



# Arizona's Civil Verdicts 2013

BY KELLY WILKINS MACHENRY



# TOP 10 Largest Arizona Verdicts 2013

**1**

*Olivia Duron v. Copper Queen Hospital, Pima County Superior Court, C20109934<sup>6</sup>*

**\$12,123,000**

Olivia Duron, 27, underwent chemotherapy for leukemia. The chemotherapy caused platelets in her blood to drop dangerously low. She reported bleeding to her hematologist Dr. Stephen Ketchel. Ketchel's office faxed an order for a complete blood count, but the fax went to an incorrect number. Duron went to Copper Queen Hospital's Laboratory for the test but instead of the CBC, the lab ran a different test under a standing weekly order. The next day, Duron had a retinal hemorrhage in both eyes that was caused by severely low platelets. She became temporarily blind and developed severe eye infections. Duron was evaluated for eye infections by ophthalmologist Whitney Lynch over the next 11 days. Within days, Duron became completely blind, and both eyes had to be surgically removed. Duron claimed that Copper Queen Hospital should have recognized that it did not have a valid order, contacted Ketchel, and obtained the lab test order that should have been done. Copper Queen Hospital defended that it used the only order that had been provided by Ketchel and that it was the obligation of the doctor and his staff to fax it to the office. It also defended that the low platelet count did not cause the eye infections, and that Duron's blindness was the fault of Ketchel and Lynch. The jury awarded \$12,212,300. The jury found Ketchel 54 percent at fault, Lynch 36 percent at fault, and Copper Queen Hospital 10 percent at fault.

Olivia Duron, 27, underwent chemotherapy for leukemia. The chemotherapy caused platelets in her blood to drop dangerously

Mutual Insurance. Lane and his wife Lynn Lane alleged that American Family failed to offer the policy limit but instead delayed in adjusting the claim, concealed from DeWitt an exclusion for criminal convictions, and improperly interviewed DeWitt about his plea negotiations. After DeWitt entered a guilty plea in a related criminal case, American Family took the position that DeWitt no longer had coverage. The Lanes filed a civil complaint and entered into an agreement in which DeWitt would allow a default judgment of \$8 million to be entered against him. American Family denied that it concealed coverage issues, obtained confidential information from DeWitt or acted unreasonably in handling the claim. The jury awarded \$4.5 million to Kelly Lane and \$500,000 to Lynn Lane.

**3**

*Richard Sudberry v. City of Phoenix Police Department et al., Maricopa County Superior Court, CV2009-050501<sup>8</sup>*

**\$3,000,000**

Kaitlyn Sudberry 17, was a high school senior in Phoenix. Her ex-boyfriend, 17-year-old Daniel Byrd, exhibited escalating possessive and jealous behavior. He assaulted her at school twice, harassed her by phone, and threatened to kill her and himself. The Sudberry family got an injunction against harassment but at that time there were no laws in place to have him arrested. On Jan. 28, 2008, Byrd shot and killed Sudberry and then killed himself. Her father, Richard Sudberry, claimed that the City of Phoenix Police Department failed to make adequate efforts to locate Byrd, to protect Sudberry from harm, or to provide sufficient information regarding the seriousness of the threat. The Phoenix Police Department defended that it did not contribute to her death, and that it followed proper procedures and that further efforts to find and apprehend Byrd would not have prevented her death. It further claimed that Byrd, his mother and other nonparties were the only ones at fault for her death. The jury awarded \$3 million. The jury found the Phoenix Police Department 40 percent at fault, Richard Sudberry 40 percent at fault, Daniel Byrd 10 percent at fault, and Byrd's mother Lucille Reveles 10 percent at fault.

Kaitlyn Sudberry 17, was a high school senior in Phoenix. Her ex-boyfriend, 17-year-old Daniel Byrd, exhibited escalating possessive and jealous behavior. He assaulted her at

**2**

*Kelly Lane and Lynn Lane v. American Family Mutual Insurance Co., United States District Court for the District of Arizona, 09-cv-00640<sup>7</sup>*

**\$5,000,000**

This was an insurance bad faith case. Kelly Lane was completing a bike ride when he was accidentally shot. The bullet was fired by either non-party Jeremy DeWitt or by another non-party.

DeWitt had personal liability insurance with American Family

# 4

*Bacon Industries, Inc., Donald Rollings and Kelley Rollings v. City of Tucson, Pima County Superior Court, C2002-0509*

**\$2,945,158**

2013 trial, landowners Bacon Industries and Donald and Kelley Rollings alleged that water has leaked for several years from Tucson's water mains in a historic downtown neighborhood. The clay soil in the neighborhood caused the water to run laterally, into four adobe homes that are on the National Register of Historic Places. The walls of the homes deteriorated and cracked over time. The owners alleged that Tucson negligently maintained its water mains and was negligent in its decision to repair rather than replace the mains. They asked for just over \$3 million for damage to those properties and block walls. Tucson argued that its water mains were not leaking and that it could be rain water that was trapped in and under the adobe walls. Tucson also defended that the cause of the damage was natural erosion, as well as the use of lime plaster that can trap moisture in adobe walls. The jury awarded a total of \$2,945,158, about two-thirds of it for property damage and restoration costs and the rest for lost rental income.

This was the retrial of a case that we identified as a top defense verdict from 2006, when zero damages were awarded. The case was appealed and remanded for a new trial. In the

# 5

*Custom Homes by Via LLC et al. v. Bank of Oklahoma, N.A., United States District Court for the District of Arizona, 12-cv-01017<sup>9</sup>*

**\$2,404,193.<sup>58</sup>**

Enclave in Gilbert, Ariz. Bank of Oklahoma agreed to fund the project with a \$4 million line of credit for construction, and the loan was executed in January 2007. The bank declined to extend the loan for a second year even though the extension conditions were satisfied. On Dec. 31, 2009, the bank held a trustee's sale of the collateral. Bank of Oklahoma defended that it properly followed the terms of the contract and dealt fairly. After a bench trial, the court found that the bank breached its contract and failed to do what it was required to do under the contract and in good faith. The court awarded the property value of \$2.1 million, the amount that the

This was an action by a borrower, Custom Homes by Via, against its lender, Bank of Oklahoma. Custom Homes planned to build and develop a residential community called the

# 6

*Robert Eric Lee v. Fernando Santa Cruz, Ferrellgas LP and State of Arizona, Pima County Superior Court, C2011-8620<sup>10</sup>*

**\$2,000,000**

bank bid at foreclosure. The court also awarded stipulated interest of \$289,881.58 and loan fees of \$14,312.

Robert Eric Lee was riding his motorcycle when he alleged that Fernando Santa Cruz, a truck driver for Ferrellgas, turned left into his path and they collided. Lee also claimed that Arizona negligently

designed the intersection. Lee sustained a closed head injury with lasting cognitive deficits, third-degree burns to his lower legs, sixth cranial nerve palsy, a lip laceration, seizures, and an aggravation of a skin condition. He asked the jury for up to \$6 million. Santa Cruz and Ferrellgas defended that their truck was stopped when Lee crashed into it. They also alleged that Lee was speeding, and that the intersection was dangerous because it had poor visibility, inadequate signs, and improper striping. Arizona defended that the intersection was reasonably safe. The jury awarded \$2 million. The jury found Lee 63-and-a-half percent at fault, Santa Cruz and Ferrellgas 36-and-a-half percent at fault, and Arizona zero percent at fault.

# 7

*Sheldon Pooley, Jr. et al. v. Brian Horowitz and BAM Brokerage, Inc., Pima County Superior Court, C2012-1303<sup>11</sup>*

**\$1,936,956.<sup>84</sup>**

Brian Horowitz and his business BAM Brokerage took a total of \$1,430,000 in loans from a group of lenders including Sheldon Pooley and others. Horowitz and BAM Brokerage made representations about the state of the company and what the money was to be used for, and later failed to repay the loans. The lenders sued to recover the principal loan amounts, interest, costs, and punitive and treble damages. After a bench trial, the court found that the lenders reasonably relied on the representations in loaning the money and that the financial information provided to them was materially false. The court awarded \$1,006,986.20 to the lenders against Horowitz, \$503,169.68 against Horowitz and BAM Brokerage jointly, and \$426,799.96 against BAM Brokerage.

**8**  
*Bank of Oklahoma, NA v. Vilanova Development, LLC, Robert Klepinger and Marilyn Klepinger,*  
 Pima County Superior Court, C2010-0175  
**\$1,678,603.<sup>80</sup>**

2006. Vilanova and Klepinger defaulted, and the bank purchased the lots at a trustee sale. The bank sued to recover the deficiency of over \$1 million. After a bench trial, the court awarded the deficiency of \$1,078,793.66 plus interest due under the loan agreement.

**9**  
*Dale Black v. BNSF Railway Company,*  
 Maricopa County Superior Court, CV2009-020785<sup>12</sup>  
**\$1,650,000**

failed, the engines continued moving forward when the rest of the train had stopped, which caused him to slam into the dashboard. Black claimed BNSF violated the Federal Employers Liability Act and failed to provide a reasonably safe place to work. He also alleged that the train was made up with loads toward the rear of the train, making severe slack action more likely, and that the brake system was defective. He sustained a cervical strain and sprain that required a cervical fusion, a torn shoulder tendon and

This was another loan default. Vilanova Development was a residential construction company. It and its manager Robert Klepinger took a \$2,369,500 acquisition and development loan from the Bank of Oklahoma in

Dale Black worked for BNSF Railway Company as a locomotive engineer. As he was operating a train, it experienced severe slack action and went into an unexpected emergency stop. He alleged that because the dynamic brakes

torn ligaments of the wrist and hand that all required surgery, and exacerbation of arthritis. BNSF defended that it complied with industry standards and its own rules, that the stops were not caused by defects in the brake system, and that the slack action was Black's fault. BNSF argued that his injuries were not caused by slack action, that they were caused by preexisting conditions, and that Black later earned almost the same amount as a trainmaster. The jury awarded \$1,650,000 and found Black to be 20 percent at fault. This was the third FELA case in two years to reach the "top 10" in Arizona verdicts.

**10**  
*Scot Sobieski v. American Standard Insurance Co. of Wisconsin and American Family Insurance,*  
 Maricopa County Superior Court, CV2010-092624<sup>13</sup>  
**\$1,500,000**

Scot Sobieski was riding his motorcycle in Phoenix when an uninsured driver stopped abruptly during a right turn without signaling. Sobieski struck the rear of the car and was injured.

Sobieski filed a claim with his own insurance company, American Standard Insurance Company of Wisconsin, for uninsured motorist benefits. American Family denied the claim four days after the accident after interviewing the uninsured motorist but without additional investigation. The claim was arbitrated nearly three years after the crash and the arbitrator found Sobieski's damages to be \$950,000 and that he was 60 percent at fault, for a net award of \$380,000. American Standard Insurance then paid the policy limits of \$100,000 to Sobieski. He filed this bad faith lawsuit, contending that American Standard Insurance and its parent company American Family Mutual Insurance Company failed to properly investigate, evaluate and pay his claim. American Standard and its parent defended that they handled his claim properly. The jury awarded \$500,000 in compensatory damages and \$1,000,000 in punitive damages. This was the largest Arizona punitive damage award of 2013.

## Plaintiffs Won 57 Percent of the Trials

Statewide, plaintiffs prevailed in 57 percent of the trials, and defendants prevailed in 43 percent. Over the past decade, this statistical chance of prevailing in any given case has remained within a narrow range (53 percent–66 percent). Plaintiffs' statistical percentage of prevailing has ranged from 56 percent to 63 percent over the

past five years. Over the past 10 years, the average percentage chance of a plaintiff winning is 60 percent.

Federal court had only a slightly higher statistical chance of success for defendants in its verdicts, as compared to state court. In most recent years, it has held a much better chance of success for civil defendants. In

2013, however, it was not as great a disparity. In the United States District Court for the District of Arizona in 2013, civil defendants prevailed in 52 percent of the reported verdicts. There were 11 plaintiff's verdicts and 10 defense verdicts. In federal court, the average plaintiff's verdict was \$884,581 and the median was \$414,900.



## Venue Comparison

Jury awards consistently vary by county in Arizona. Averages and medians<sup>14</sup> of how much juries awarded in 2013 when they gave plaintiffs' verdicts in each venue are as follows. Those figures are shown above and also shown on the map below.

The statewide average plaintiff's verdict<sup>15</sup> in 2013 was \$378,603. The statewide median in 2013 was \$33,000. Sixty-four percent of all the verdicts came from Maricopa County, as is typical. Maricopa County is the fourth-largest trial court jurisdiction in the country,<sup>16</sup> as well as one of the largest counties in the United States by population and by land area.

Pima County had a notable 2013. It had six verdicts more than \$1 million, the most in any single year over the past 10 years. Those verdicts made up five of the "top 10."

The outlying counties lean more conservatively and tend to return defense verdicts or plaintiff's verdicts that are relatively lower. Yavapai County reported one plaintiff's verdict of \$10,000 as well as two defense verdicts. Santa Cruz County had one plaintiff's verdict of \$432.75 and one defense verdict.

Mohave County reported one plaintiff's verdict of \$1 and one defense verdict. Pinal County had two defense verdicts. Apache, Navajo and Yuma County reported one defense verdict each.

| Venue   | Average Plaintiff's Verdict | Median Plaintiff's Verdict | Percentage of Trials Won by Plaintiffs |
|---|-----------------------------|----------------------------|--|
| Statewide                                       | \$378,603                   | \$33,000                   | 57                                     |
| U.S. District Court for the District of Arizona | \$884,581                   | \$414,900                  | 52                                     |
| Pima County                                     | \$862,526                   | \$84,297                   | 70                                     |
| Maricopa County                                 | \$155,085                   | \$21,218                   | 67                                     |
| Cochise County                                  | \$18,394                    | \$18,394                   | 66                                     |

No verdicts for either side were reported out of Coconino, Gila, La Paz, or Graham County. Greenlee County has not reported a civil verdict in 10 years.

## Number of All 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 (see the chart, page 45). There has not been a clear shift toward either plaintiff's or defense verdicts in that time. Since 2009, the

ago. This is now a clearly visible trend over several years.

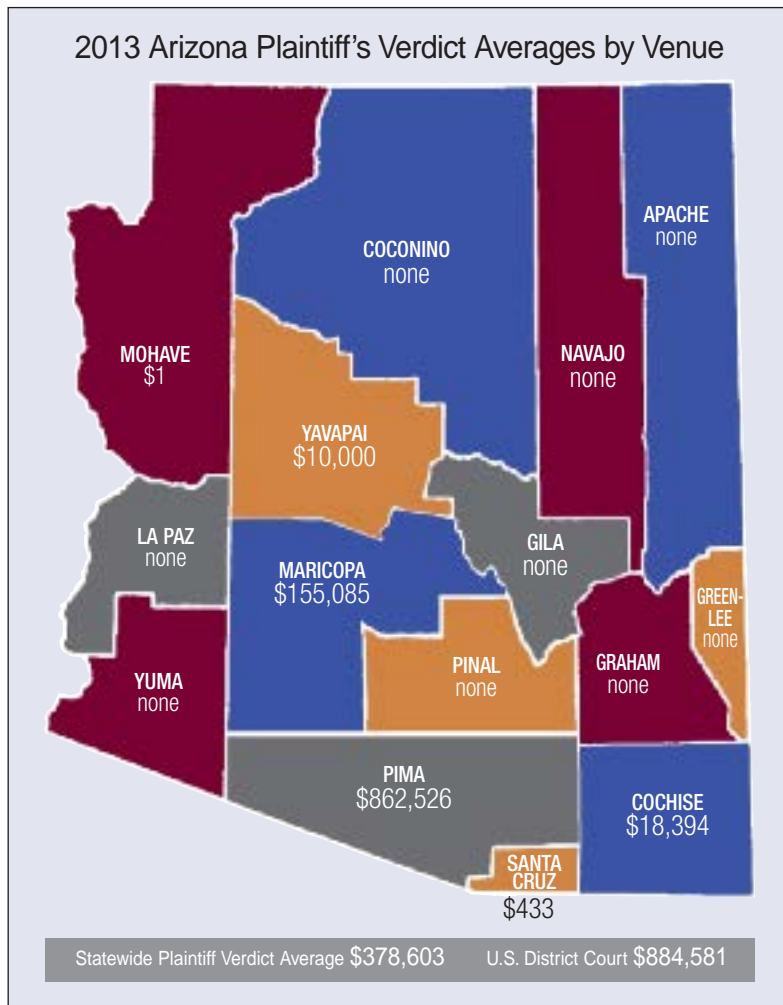
Why is this so? New civil case filings in Maricopa County were down 13 percent between fiscal years 2012 and 2013.<sup>17</sup> Pending civil case inventory in Maricopa County declined by 33 percent between fiscal years 2009 and 2013. Both business and injury trials seem equally reduced in quantity. Cases at higher levels of claimed damages (over \$50 million, for example) do not seem to be going to trial as frequently. Some believe that plaintiffs are being more selective about the cases that they file and prosecute,

perhaps as a consequence of the post-recession world. Another likely factor is more frequent or more successful alternative dispute resolution, or mandatory ADR. One commentator suggested that businesses "have an irrational fear of jurors" and have begun to rely too heavily on arbitrators.<sup>18</sup> We're interested in your thoughts about what else might be driving this.

## Punitive Awards

Punitive damages were awarded in nine cases in 2013. This follows the trend of only a handful of punitive awards in recent years. Arizona juries tend to award punitive damages only when presented with aggravating or extreme facts, and they typically do not give such awards in large multipliers.

The largest punitive award in 2013 in Arizona was for \$1 million, as noted above in the *Sobieski* insurance bad faith case. An award of \$500,000 was given in another insurance bad faith case in a dispute over the



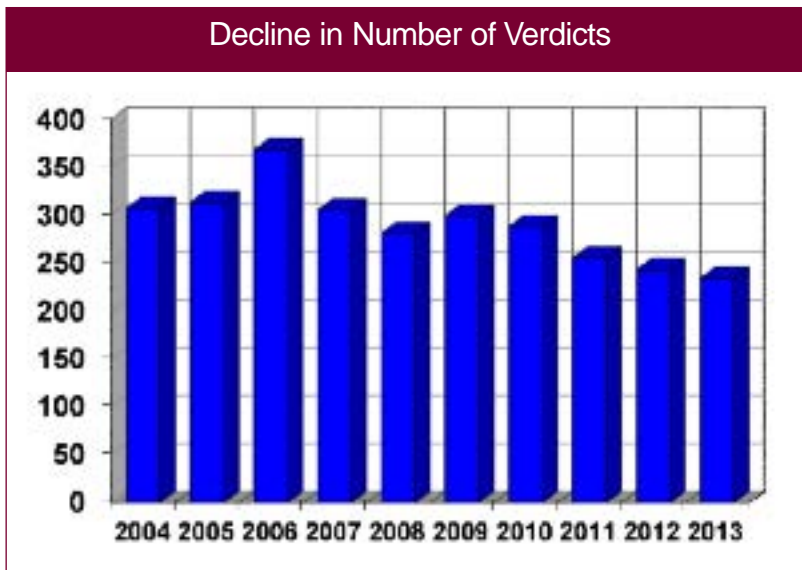
extent of damage and coverage. The other punitive awards from 2013 included cases involving defamation in an online posting, child molestation, and a car dealer's failure to refund a down payment. The other seven punitive awards were \$250,000 or less, including one for \$1.

## Business Verdicts and Personal Injury Verdicts Awards

The average business plaintiff's verdict was \$520,594 with a median of \$176,475. Such cases included breach of contract, breach of fiduciary duty, fraud, insurance bad faith,

employment, professional malpractice, condemnation, and property damage. Of all of the business cases tried in 2013, plaintiffs won 65 percent of them, and defendants won 35 percent.

in 2013. Of all of the personal injury cases tried in 2013, plaintiffs won 54 percent of them, and defendants won 46 percent.



The average plaintiff's personal injury verdict was \$308,551. The median was \$17,000. 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 70 percent of all the cases tried to verdict

## 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 2013's significant Arizona defense verdicts:

# A

*Victoria Yanovskaya v. State of Arizona, Maricopa County Superior Court, CV2008-051113<sup>19</sup>*

This was a road design case. Victoria Yanovskaya's vehicle crashed on a freeway. She alleged that the median's slope caused

her to travel under the cable barrier and into oncoming traffic. She sustained a traumatic brain injury, loss of her left arm and right fifth finger, and emotional damages. She asked the jury to award \$30 million. Arizona defended that her vehicle would have gone through the cable barrier system anyway because of the 49-degree impact angle of her vehicle. Arizona contended the median was reasonably safe for ordinary traffic, and that Yanovskaya was responsible for her driving decisions and her injuries. Arizona also defended that there was no evidence that a slope deviation existed on the day of the crash.

# B

*Oscar Aguilar v. Werner Enterprises, Inc. and Ronald Maupin, United States District Court for the District of Arizona, 11-CV-01385<sup>20</sup>*

Nancy Bran's car developed a flat tire while she was driving, and she stopped

in the number three travel lane of Interstate 10. She called her

husband to tell him of the car problems. About 90 seconds after the car stopped, a Werner Enterprises tractor-trailer driven by Ronald Maupin collided into the stopped car, killing Bran. Bran's parents alleged that Maupin failed to take appropriate evasive action and failed to recognize and react appropriately to the hazard. Werner Enterprises and Maupin defended that Bran created a sudden emergency and that Maupin did not see her car until it was too late. They also argued that she was negligent by stopping in a travel lane rather than moving over into the shoulder and by failing to turn on her hazard lights. They also noted that Bran's husband put on the car an inappropriate snow tire that had a bulge.

# C

*Miidas Greenhouses, L.L.C. and Invernaderos Santa Fe, S.A. de C.V. v. Berger Group Ltd., Santa Cruz County Superior Court, CV2005-0323*

In this product liability case, Miidas Greenhouses sold produce

grown by Invernaderos Santa Fe. In 2003, Miidas ordered and used Berger Group's peat moss for cucumbers. Some plants sprouted but they started drying out, and all of Miidas's seeds and resulting crops were lost. Tests showed that the moss was too acidic for vegetable seeds and that it lacked the native moisture content to enable it to absorb water. Miidas alleged the peat moss



was defective and that Berger failed to identify the acidic properties of the moss or to warn that the moss was not appropriate for vegetable seeds. Miidas claimed losses of up to \$7.5 million in damage to its seeds. Berger Group defended that the peat moss was naturally acidic and that a warning was not required.

**D** *Jean Georgianni et al. v. State of Arizona*, Maricopa County Superior Court, CV2010-008403<sup>21</sup>

Douglas Georgianni, a photo radar technician, was shot and killed while sitting in his van. His family alleged

the state negligently implemented its program by having manned and marked vans, and that he was not trained properly and not given a bulletproof vest. The family demanded \$7 million. Arizona defended that the shooter was solely responsible, that the incident was unforeseeable, and that its program was reasonable and provided adequate training. Arizona also contended it had immunity and did not owe Georgianni any duty of care.

**E** *Insurance Company of the West v. Maricopa County*, Maricopa County Superior Court, CV2007-003947

Insurance Company of the West provided excess public liability

coverage to Maricopa County. In 1996, Maricopa County terminated the employment of non-party Michael Walters. Walters filed suit against the county, alleging wrongful discharge and retaliation. At that trial of the underlying case, the jury awarded Walters \$4.75 million in 2005, the ninth-highest Arizona verdict that year.<sup>22</sup> Insurance Company of the West paid the judgment and then brought this suit to recover its payment against the county. The insurer alleged the county sustained the loss due to the county's bad faith in failing to give timely notice of Walters' claim, and that the late notice deprived it of the opportunity to evaluate the claim, to participate in the settlement conference, and to associate in the defense of Walters' case. At trial, the insurer sought to recover \$5,458,767.57 plus interest. The case was a declaratory judgment action tried to a jury, and the jury answered special questions. Maricopa County defended that it gave timely notice, and that Insurance Company of the West was not prejudiced. The county also argued that Insurance Company of the West was aware that Walters' demand potentially reached into its coverage layers, but that it did nothing further until after the jury reached its verdict in the underlying case.

**F** *Mickey and Dennis Davison v. Lee Yosowitz*, Maricopa County Superior Court, CV2009-012359

In this medical malpractice case, Mickey Davison alleged her gynecologist failed to

diagnose and repair bowel perforations during surgery. She alleged that by the time the perforations were diagnosed, she had developed peritonitis and an infection. She developed short gut syndrome, had ongoing pain and loss of balance, and became totally disabled. She asked the jury to award \$3 million to \$7 million. Yosowitz defended that small perforations may not be detectable during surgery, and that it was not below the standard of care to miss small perforations, due to distorted anatomy from previous surgery.

**G** *Mark Balter et al. v. Michael Sauter et al.*, Maricopa County Superior Court, CV2011-054945<sup>23</sup>

Mark Balter and other investors backed nine apartment complexes in Arizona and Nevada in

2006 and 2007. When the housing market collapsed, Michael Sauter and the other defendants were unable to find a buyer or to refinance the loans, and lost all the properties to the lenders, costing the investors their entire investment. The investors alleged that the offerings were not supported by adequate due diligence and that the projects were not structured for anything other than a short-term "flip" sale. Defendants argued that the investments failed due to market-wide economic conditions, that they included all customarily included information for similar investments, and that the claims were barred by the statute of limitations. The investors claimed \$2,805,806.50 in compensatory damages and asked for the same amount in punitive damages. The jury answered special questions that found all of the claims time-barred by the statute of limitations, and declined to award punitive damages.

**H** *Mark Sanchez v. United Parcel Service, Inc.*, United States District Court for the District of Arizona, 10-CV-01586<sup>24</sup>

Mark Sanchez was a feeder driver for United Parcel Service. He sustained a

tear in the cartilage of his left shoulder joint that required certain restrictions on lifting and driving. He alleged UPS discriminated against him in violation of the Americans with Disabilities Act when it refused to provide him with an accommodation for his disability. He also claimed that UPS retaliated against him in violation of the ADA when it refused to return him to work for over eight years after he filed an equal employment opportunity claim. The EEOC issued a cause finding. At trial, Sanchez claimed more than \$720,000 in lost wages and medical expenses and an additional unspecified amount of emotional distress damages. UPS defended that there was no accommodation that would have allowed him to return to work, and that his physician had not cleared him to return. UPS denied that it retaliated against Sanchez because it worked through the accommodation process with him several times, it did not terminate his employment, and it returned him to work when he was medically cleared.

## Where Are They Now?

Here are past years' notable verdicts that had significant developments in 2013:

*Lori Sandretto v. Payson Healthcare Management, Inc.*, Arizona Court of Appeals, Division Two, CA-CV-2013-0044. This was a medical malpractice award for \$7.275 million in 2012. In a memorandum opinion, the Court of Appeals affirmed the denial of Payson Management's motion for a new trial. The opinion analyzed the admission of expert testimony under the relatively new Arizona Rule of Evidence 702, which adopted the *Daubert* standard in 2012. The court held that there was no error in the admission of the expert testimony. The court further held that there was proper foundation for another expert's opinion about a life care plan, that the scope of another expert's opinion on standard of care was properly disclosed, and that the verdict was based on substantial evidence and not excessive.

*Bard Peripheral Vascular, Inc. and David Goldfarb v. W.L. Gore & Associates, Inc.*, United States District Court for the District of Arizona, 03-cv-0597. This is one of the longest-running patent cases, and it resolved in part in 2013. After an appeal that affirmed the judgment in 2011, the case was remanded to the district court. The court found that Gore was not entitled to judgment as a matter of law on the issue of willful infringement and denied its motion for a new trial. Gore paid \$565,652,727.45 to Bard in partial satisfaction of the judgment and has appealed certain remaining issues.

There were no other appellate decisions out of 2012's top 10 verdicts or those that were highlighted as significant defense verdicts. Six of the top 10 2012 verdicts have pending appeals that are in progress. Three of 2012's significant defense verdicts have pending appeals.

## Trends

This is the 10th year I've written this article. The nearly 3,000 verdicts I've reviewed give us strong data points. Because this is year 10, I compiled the

"top 100" Arizona verdicts from 2004 through 2013, ranked by verdict amount (see that list beginning on page 48). Recall that verdicts in some years (such as 2007, 2008 and 2009) were overall higher than in other years (2004, 2012 and 2013). Thus, 10 that did not make the "top 10" in their particular year are listed, on about the bottom quarter of the list.

Arizona's largest verdicts from 2013 were in the lowest range of the last 10 years. The very largest verdicts peaked in size in 2007 and 2008, and those were also the years for the largest business verdicts. Since then, verdicts at the top have declined in size, as has the number of verdicts rendered. Punitive damages have remained rare throughout and were given most frequently in 2009. The 10-year statewide average chance of winning as a plaintiff, in all types of cases, was 60 percent.

Here are more highlights about Arizona verdicts over the past decade:

- Largest overall verdict: \$360 million (2007)
- Largest personal injury verdict: \$43.112 million (2008, product liability)
- Largest punitive award: \$155 million (2009)
- Four verdicts of more than \$100 million
- 35 verdicts of more than \$10 million, including 21 commercial/business and 14 injury/wrongful death
- Plaintiff statewide average 10-year chance of winning in all types of cases: 60 percent
- Highest percentage of plaintiff's verdicts: 66 percent (2008)
- Highest percentage of defense verdicts: 47 percent (2005)
- Highest statewide average plaintiff's verdict in a single year: \$4,012,858 (2007)
- Highest venue-specific average plaintiff's verdict in a single year: \$33,769,589 (2008, United States District Court for the District of Arizona)


# Since 2009, the number of trials has declined by four percent to 12 percent each year.

- Most verdicts rendered in a single year: 368 (2006)
- Venue that renders most civil verdicts in Arizona: Maricopa County Superior
- Venue that renders fewest civil verdicts: Greenlee County Superior (none reported)

## Conclusion

If you enjoy my verdicts articles, please follow me on Twitter (@kellymchenry), where I regularly report on verdicts. If you want to learn more about the past 10 years' Arizona civil verdicts, I'm leading a presentation about them at the State Bar of Arizona CLE By The Sea conference in Coronado, California on Friday, July 18 ("Getting What You Want From a Jury: Lessons Learned from Top Jury Trial Verdicts"). Our terrific panel includes Judge Robert Oberbillig, Patricia Lee Refo, and Myles Hassett. We're going to talk about 2013's major verdicts, trends over the past 10 years, significant appellate results, Judge Oberbillig's perspective from the bench about verdicts and trials, and the vanishing jury trial.

Benjamin Franklin said, "Either write things worth reading, or do things worth the writing." I urge lawyers to "tell the story" in their writing, and tell it in a compelling way. I write this story every year with the hope and intent that it's something worth reading.

Please feel free to contact me any time for more details about the verdicts or to report significant ones that happen in the future. Best wishes for happy lessons learned at trial.<sup>25</sup> 

Endnotes on pgs. 48 and 49

# Top 100 Verdicts of the Last Decade

| Rank | Date           | Court                          | Amount          | Case Name   | Claims  |
|------|----------------|--------------------------------|-----------------|---|---|
| 1    | Nov. 5, 2007   | Maricopa County                | \$360,000,000   | 10K, L.L.C., et al. v. W.V.S.V. Holdings, L.L.C. and Conley Wolfswinkel   | Breach of contract, fraud, misrepresentation, conversion, aiding and abetting sale, breach of fiduciary duty  |
| 2    | Sept. 25, 2008 | U.S. Dist. Ct., Dist. of Ariz. | \$269,900,000   | 10K, L.L.C., et al. v. W.V.S.V. Holdings, L.L.C. and Conley Meritage Homes Corporation, Meritage Homes Construction, Inc., and Meritage Homes of Arizona, Inc. v. Gregory Hancock                         | Breach of contract, fraud, usurpation of corporate opportunity, breach of covenant of good faith and fair dealing, breach of fiduciary duty, conversion |
| 3    | Dec. 11, 2007  | U.S. Dist. Ct., Dist. of Ariz. | \$185,000,000   | Bard Peripheral Vascular, Inc. and David Goldfarb v. W.L. Gore & Associates, Inc.   | Patent infringement   |
| 4    | Jul. 27, 2010  | Maricopa County                | \$110,658,800   | Gray Development Group v. Klutznick Company dba Northeast Phoenix Partners, L.L.C.  | Breach of contract, breach of fiduciary duty, breach of covenant of good faith and fair dealing, bad faith  |
| 5    | Jan. 26, 2008  | U.S. Dist. Ct., Dist. of Ariz. | \$95,000,000    | In Re Apollo Group, Inc. Securities Litigation  | Securities fraud  |
| 6    | Jan. 24, 2008  | Maricopa County                | \$81,903,496    | City of Scottsdale v. Edmunds-Toll Construction Company   | Condemnation  |
| 7    | Aug. 16, 2010  | Maricopa County                | \$71,598,527.84 | Mesa Bank v. Thomas Alexander, Sandra Stevens, Bobbie Jo Johnson, American Mortgage Funding, Inc., Capital Title Agency, and American Mortgage Specialists, Inc.  | Lender liability  |
| 8    | Aug. 14, 2009  | U.S. Dist. Ct., Dist. of Ariz. | \$57,269,586.60 | Atlas Flooring, L.L.C. v. Porcelanite S.A. de C.V., dba Grupo Porcelanite S.A.  | Breach of contract  |
| 9    | Mar. 20, 2009  | Maricopa County                | \$55,155,000    | Kenneth Nardelli and Tammy Nardelli v. MetLife Auto and Home Insurance Agency, Inc., Metropolitan Group Property and Casualty Insurance Company, and Metropolitan Property and Casualty Insurance Company | Insurance bad faith   |
| 10   | May 14, 2010   | Maricopa County                | \$47,031,574    | RCS Capital Development, LLC v. ABC Developmental Learning Centers USA, Inc. and ABC Learning Centers Limited   | Breach of contract  |
| 11   | Dec. 1, 2004   | Maricopa County Probate Court  | \$45,500,000    | Martin Solomon and Judy Solomon v. Developmental Systems, inc., American Habilitation Services, Inc. and State of Arizona   | Wrongful death, negligence, negligent hiring, training and supervision, abuse, breach of contract, fraud, consumer fraud                                |
| 12   | Mar. 20, 2008  | Pinal County                   | \$43,112,000    | Benjamin Mutuvi-Kavu and Dora Mutuvi-Kavu, individually and as next friend of Jeffrey Mutuvi-Kavu and Benson Mutuvi-Kavu v. Electrolux Home Products, Inc.  | Product liability   |



## endnotes

1. Fred Graham, *Anatomy of a Jury Trial: American Juries*, E JOURNAL USA (July 2009) at 4, available at <http://photos.state.gov/libraries/amgov/30145/publications-english/EJ-jury-0709.pdf>.
2. This article analyzes 235 civil verdicts reported from the Superior Courts of Arizona and the United States District Court for the District of Arizona for the 2013 calendar year. Although most were jury verdicts, a few were bench trials tried to a judge.

3. NAT'L L. J., *Top 100 Verdicts of 2013*, available at <http://www.nationallawjournal.com/id=1202647966490>.
4. 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. In two instances, verdicts on loan defaults included interest and fees that were part of the contracts. 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.
5. [pacr.gov](http://pacr.gov) for the federal system; [superiorcourt.maricopa.gov](http://superiorcourt.maricopa.gov) for Maricopa County; [agave.cosc.pima.gov](http://agave.cosc.pima.gov) for Pima County; and <http://apps.supremecourt.az.gov> for the other counties.
  6. Copper Queen Hospital has filed an appeal that is pending.
  7. American Family filed a motion for judgment as a matter of law or in the alternative for a new trial, and that motion is pending.
  8. The City of Phoenix Police Department has filed an appeal that is pending. In 2009, Arizona passed "Kaity's Law,"

- A.R.S. § 13-3601, which provides people who are dating the same protection against domestic violence as those who are married, living together, blood related, have a child together or are pregnant.
9. Bank of Oklahoma has filed an appeal that is pending. Custom Homes has filed a cross-appeal on other claims and that is also pending.
  10. Another defendant was Ferrellgas, Inc.
  11. Other plaintiffs were Margaret Pooley, David Pooley, Nancy Pooley, Kenneth Martin and Christy Martin.
  12. BNSF filed a motion for a new trial and/or remittitur that was denied, and has filed a notice of appeal.
  13. American Standard Insurance Company of Wisconsin filed a motion for judgment as a matter of law and for a new trial, which is pending.



| Rank | Date           | Court                          | Amount          | Case Name   | Claims   |
|------|----------------|--------------------------------|-----------------|---|--|
| 13   | Jun. 14, 2006  | Maricopa County                | \$41,500,000    | Security Title Agency, Inc. v. First American Title Insurance Company dba The Talon Group, Linda Pope and Thomas Pope   | Breach of fiduciary duty, interference with business relations |
| 14   | Feb. 2, 2010   | Pima County                    | \$40,000,000    | Jose Rincon Sr. and Adriana Rincon v. City of Tucson and Glenda Rumsey  | Wrongful death, road design and intoxicated driver             |
| 15   | Nov. 30, 2007  | Maricopa County                | \$37,601,247.47 | Jeanne Steven, et al. v. Swift Transportation Co. Inc.  | Wrongful death trucking crash                                  |
| 16   | Nov. 26, 2008  | Maricopa County                | \$36,000,000    | Anita Graham, Marcus Graham, Jordan Graham, Henry Graham, and Oneida Graham v. ValueOptions, Inc. and VO of Arizona, Inc.   | Wrongful death, medical malpractice                            |
| 17   | Sept. 5, 2008  | Maricopa County                | \$33,300,000    | AAA Full Transportation System dba AAA cab Services Inc. v. John Hollis, Judy Hollis, Joseph Patterson, American Transport Insurance Corporation, American Frontier General Agency and Robert Osmundsen | Fraudulent insurance scheme                                    |
| 18   | Feb. 16, 2012  | Maricopa County                | \$30,600,000    | Alan Pribble, Brian Pribble, Amanda Pribble, and Cheryl Coleman v. Jose Gonzalez  | Injury, multiple vehicle crash                                 |
| 19   | July 19, 2005  | Maricopa County                | \$28,000,000    | Orlando Aviles, Leonard Aviles, Anita Watson, Carmen Tallabas, and Ella Lou Saldana v. Maricopa County Medical Center   | Wrongful death, medical malpractice                            |
| 20   | Oct. 7, 2005   | U.S. Dist. Ct., Dist. of Ariz. | \$19,809,028    | Brett Leavey v. Unum Provident Corporation and Provident Life and Accident Insurance  | Insurance bad faith  |
| 21   | Jan. 28, 2009  | Maricopa County                | \$19,484,965    | State of Arizona v. Lesueur Investments V, L.L.C.   | Condemnation   |
| 22   | Mar. 9, 2009   | U.S. Dist. Ct., Dist. of Ariz. | \$18,500,883.59 | Brenda Moody Whinery, as Creditor Trustee of Fort Defiance Housing Corporation, Inc. v. Lodgebuilder, Inc., William Aubrey, and Brenda Todd   | Bankruptcy action to recover misappropriated assets and funds  |
| 23   | Aug. 31, 2005  | Maricopa County                | \$18,000,000    | Richard Jones, Ricky Jones, and Tristan Jones v. Thomas Moffo and Maryvale Emergency Physicians   | Wrongful death, medical malpractice                            |
| 24   | Sept. 25, 2008 | Maricopa County                | \$17,000,000    | Gravel Resources of Arizona v. Salt River Sand & Rock   | Breach of contract, mining royalties                           |
| 25   | Nov. 14, 2007  | Maricopa County                | \$16,194,178    | Property Masters of America, L.L.C., Mark Bosworth, and Lisa Bosworth v. TEM Holdings, L.L.C. and Benjamin Magelsen   | Breach of contract, award on counter-claim                     |
| 26   | Dec. 20, 2011  | U.S. Dist. Ct., Dist. of Ariz. | \$15,475,482    | Integrated Technology Corporation and Nevada Integrated Technology Corp. v. Rudolph Technologies, Inc.  | Patent infringement  |

14. 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.

15. 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 2013 (both plaintiffs' and defendants' verdicts)

would be \$218,425.

16. JUDICIAL BRANCH OF ARIZONA IN MARICOPA COUNTY, ANNUAL REPORT SUPERIOR AND JUSTICE COURTS, at 5 (FY2013), available at <http://www.superior-court.maricopa.gov/media-relationsdepartment/docs/annualrep/fy2013annualrpt.pdf>.

17. *Id.* at 7.

18. Jess Davis, *Susman Head Calls for Changes to Civil Jury Trials*, Feb. 14, 2014, PRODUCT LIABILITY LAW360, available at [www.law360.com/articles/502415/susman-head-calls-for-changes-to-civil-jury-trials](http://www.law360.com/articles/502415/susman-head-calls-for-changes-to-civil-jury-trials).

19. Yanovskaya's motion for a new trial was denied. She filed a notice of appeal, which she ultimately abandoned.

20. Other plaintiffs were Bran's

children Brianna Aguilar, Catherine Aguilar, and Ingrid Aguilar and her parents Dora Santiago and Julio Bran. Plaintiffs filed a motion for a new trial that was denied. Plaintiffs have filed an appeal that is pending.

21. Other plaintiffs were Michael Georgianni and June Dorcheus.

22. My report of the 2005 Walters verdict is available at [www.myazbar.org/AZAttorney/PDF\\_Articles/0506Civil.pdf](http://www.myazbar.org/AZAttorney/PDF_Articles/0506Civil.pdf).

23. Other defendants were S-J Management LLC, Bear Canyon Associates LLC, Speedway Associates LLC, La Reserve Associates LLC, Sienna Associates LLC, Alta Mesa Associates LLC, Augusta Apartments Associates

LLC, The Canyons Associates LLC, Springs Ranch Associates LLC, and Desert Mirage Associates.

24. Sanchez has filed an appeal that is pending.

25. Much appreciation to the readers for your kind comments and the encouragement to keep writing this yearly article. Many thanks and kudos to the wonderful Pam Ritchey who assists me in countless ways. Thank you to Editor Tim Eigo for a great creative collaboration over 10 years and to Art Director Karen Holub for the artwork that always seems to fit perfectly. As I was writing this, my sweet and energetic beagles Sam and Sky happily jumped up and reminded me that they helped too.

# Top 100 Verdicts of the Last Decade

| Rank | Date          | Court                          | Amount         | Case Name  | Claims   |
|------|---------------|--------------------------------|----------------|--|--|
| 27   | Nov. 8, 2006  | U.S. Dist. Ct., Dist. of Ariz. | \$15,000,000   | Bruce Austin v. Kenneth Howard and Little Bear Transport, Inc.   | Trucking, negligent hiring and supervision               |
| 28   | Mar. 13, 2012 | U.S. Dist. Ct., Dist. of Ariz. | \$13,218,000   | Carrie Bachrach and Randolph Bachrach v. Covenant Transportation, Inc. and Alfred Simister   | Wrongful death trucking crash                            |
| 29   | Nov. 6, 2013  | Pima County                    | \$12,123,000   | Olivia Duron v. Copper Queen Hospital  | Medical malpractice                                      |
| 30   | Dec. 14, 2011 | Maricopa County                | \$12,000,000   | Desert Palm Surgical Group, P.L.C., Albert Carlotti, and Michelle Cabret-Carlotti v. Sherry Petta  | Defamation   |
| 31   | Aug. 22, 2007 | Maricopa County                | \$11,190,000   | Randy Harper dba Harper Sand & Rock, L.L.P. v. William Lueck, Mary Lueck, Lueck Investment, L.L.C., and El Mirage & Southern L.L.C.  | Breach of contract, mining lease                         |
| 32   | May 20, 2009  | U.S. Dist. Ct., Dist. of Ariz. | \$11,000,000   | Carmen Caccavale, Henry Schein dba Caligor Physicians & Hospital Supply Corp. v. McKesson Medical-Surgical Inc.  | Abuse of process, award on counterclaim                  |
| 33   | Mar. 29, 2009 | Maricopa County                | \$11,000,000   | Lydia Scherrer v. Liberty Manor Residency, Inc. dba Liberty Manor Residency II   | Wrongful death, incapacitated adult in assisted living   |
| 34   | May 5, 2008   | Maricopa County                | \$10,594,400   | Media Services Limited v. Pure Verge, L.L.C. dba ePoint Processing, Ltd, June An, and Cory Harris  | Breach of contract, credit card purchase processing      |
| 35   | Mar. 24, 2006 | U.S. Dist. Ct., Dist. of Ariz. | \$10,000,009   | Carol Agster and Charles Agster v. Maricopa County, Maricopa County Correctional Health Services, Maricopa County Sheriff's Office, Michael Wilkins, Kristine Kemper, Amanda Garrison, Laura Sodemán, Leah Compton, Katherina Brokschmidt, Eric Nulph, Baruch Reusch, and Susan Fisher | Wrongful death, excessive force and civil rights         |
| 36   | Jul. 28, 2004 | Maricopa County                | \$9,389,763.39 | Sports Imaging of Arizona, L.L.C. v. OMI-Omni Medical Imaging  | Breach of contract, breach of fiduciary duty, conversion |
| 37   | Nov. 24, 2004 | U.S. Dist. Ct., Dist. of Ariz. | \$9,388,799.07 | Research Corporation v. Westport Insurance Corporation   | Insurance bad faith                                      |
| 38   | Sept. 4, 2007 | La Paz County                  | \$9,200,000    | La Paz County v. Yakima Compost Company, Inc.  | Breach of contract, award on counterclaim                |
| 39   | Mar. 6, 2007  | Pima County                    | \$9,143,500    | Julie Rogers, Frank Rogers, and Talin Rogers v. Pima County, Judith Ealey, and Donald Leming   | Injury, road design                                      |
| 40   | Jan. 21, 2009 | Maricopa County                | \$9,063,446    | City of Phoenix v. Cornerstone at Camelback, L.L.C.  | Condemnation   |
| 41   | Oct. 18, 2006 | Maricopa County                | \$9,000,000    | Thomas Hudgins and Leroy Devore v. Southwest Airlines, Inc.  | False arrest   |
| 42   | Oct. 19, 2007 | Pima County                    | \$9,000,000    | Leonard Moody and Shirley Moody v. Pima County, Michael Baker, and Connie Baker  | Injury, road design and intoxicated driver               |
| 43   | Jan. 13, 2005 | Pima County                    | \$8,750,000    | Daniel Storm and Debra Storm v. Robert Yocum, Grey Rock, L.L.C, and Recwest, Inc.  | Injury, motorcycle and truck                             |
| 44   | May 3, 2010   | Maricopa County                | \$8,500,000    | David Ramsey v. International Water Safety Foundation  | Insurance bad faith                                      |
| 45   | Feb. 9, 2013  | Maricopa County                | \$7,800,000    | Diana Glazer, Lindsay Glazer, and David Glazer v. State of Arizona Department of Transportation  | Wrongful death, road design                              |
| 46   | Sept. 8, 2004 | Maricopa County                | \$7,500,000    | Anthony Sandoval and Isabella Sandoval v. State of Arizona Department of Child Protective Services, Leah Wells, and Susan LeVancier  | Wrongful death, child abuse                              |
| 47   | Jul. 16, 2012 | Gila County                    | \$7,275,160    | Lori Sandretto v. Payson Healthcare Management, Inc.   | Medical malpractice                                      |
| 48   | Jan. 22, 2012 | Maricopa County                | \$7,183,260    | Bentley Gallery, Inc. v. Glen Lineberry and Heather Lineberry and Rosethorn Art Group, LLC   | Breach of contract, art commission                       |
| 49   | Jun. 22, 2007 | Maricopa County                | \$7,000,000    | Brent Bartell v. Mesa Soccer Club, Aaron Muth, and Rea-Ann Fuzy  | Injury, motor vehicle crash                              |
| 50   | May 19, 2005  | Maricopa County                | \$7,000,000    | Kenneth Felder v. Physiotherapy Associates   | Injury, premises liability                               |

# Top 100 Verdicts of the Last Decade

| Rank | Date          | Court                          | Amount         | Case Name  | Claims   |
|------|---------------|--------------------------------|----------------|--|--|
| 51   | Oct. 2, 2009  | U.S. Dist. Ct., Dist. of Ariz. | \$6,600,004    | Skydive Arizona v. Cary Quattrocchi, Ben Butler, USSO, LLC, CASC, Inc., Atlanta SC, Inc., IGOVincent, Inc.   | Trademark infringement   |
| 52   | Apr. 5, 2006  | U.S. Dist. Ct., Dist. of Ariz. | \$6,325,582    | Marlyn Nutraceuticals, Inc. v. World Nutrition, Inc., Patrick Buehl, and William Wong  | Unfair competition, false advertising, misappropriation, conversion, trade libel |
| 53   | Nov. 5, 2012  | Maricopa County                | \$6,200,000    | Rancho Tuscana, L.L.C., David Ewell, Diane Ewell, Stewart Graf, and Susan Graf v. Guaranty Bank and Trust Co.  | Lender liability   |
| 54   | Feb. 24, 2004 | Pinal County                   | \$6,100,000    | Austreberto Romero and Esmeralda Romero v. Rapid Express, Inc. and Steven Conrad   | Injury, motor vehicle crash  |
| 55   | Aug. 31, 2012 | Maricopa County                | \$6,000,000    | Brenda Busch v. Valley Radiologists, Ltd., Derek Van Haag, Southwest Heart & Lung-Scottsdale PC, Kenneth Prebil, Vishal Singh, Saguaro Medical Associates PC   | Medical malpractice  |
| 56   | Apr. 14, 2008 | Pima County                    | \$6,000,000    | Mary Culpepper, John Culpepper, and Robert Culpepper v. TMC Healthcare, Tucson Long Term Care Medical Group, Inc., Scott Bolhack, Jean Marsalla, and Omnicare Pharmacy Services, Inc.  | Wrongful death, elder abuse  |
| 57   | Oct. 11, 2007 | Coconino County                | \$6,000,000    | Mitzi Warren, Gloria Warren, and Walter Warren v. Walgreen Co. and Walgreen Arizona Drug Co.   | Wrongful death, medical malpractice  |
| 58   | Jun. 3, 2005  | Pima County                    | \$6,000,000    | Jennifer Ward v. Misty Golder, James Golder, Paul Ash Management Co., L.L.C., and Saint Thomas Properties, L.L.C.  | Wrongful death, premises liability and negligent supervision                     |
| 59   | Jun. 7, 2011  | Maricopa County                | \$5,945,000    | Ronald Day and Heather Day v. Amor Ministries and Central Christian Church   | Injury, construction site  |
| 60   | Aug. 29, 2012 | Maricopa County                | \$5,875,000    | Jonathan Connolly, Benjamin Connolly, Emma Connolly, Terry Larsen, and Jann Loudin v. Michael Beck   | Medical malpractice  |
| 61   | Jun. 23, 2004 | Maricopa County                | \$5,866,000    | Rebecca Van Zee, John Van Zee, and Sue Anne Willingham v. Genuine Parts Company and Brian Lyke   | Wrongful death, motorcycle crash   |
| 62   | Jan. 18, 2005 | Maricopa County                | \$5,825,000    | Chelby Stephens, Cooper Stephens, and William Stephens v. John C. Lincoln Health Network   | Medical malpractice  |
| 63   | Jun. 22, 2008 | Maricopa County                | \$5,825,000    | Kevin Routon v. Jeffrey Zuhl   | Medical malpractice  |
| 64   | Dec. 6, 2006  | Maricopa County                | \$5,358,473    | A Tumbling-T Ranches, Russell Badley Farms, Inc., Delmar John and Jean John dba Delmar John Farms, Rosemary Edwards, Wood Brother Farms, John Fornes, Shelley Fornes, PJ Farms Ltd Partnership, Roy Pierpoint, Ella Pierpoint, Pierpoint Farms, Inc., and Gila River Farms, Inc. v. Maricopa County Flood Control District | Inverse eminent domain   |
| 65   | Oct. 20, 2005 | Maricopa County                | \$5,253,640.60 | California Portland Cement Company v. Grant Goodman and Teri Goodman   | Breach of contract   |
| 66   | Feb. 4, 2010  | Navajo County                  | \$5,195,733.90 | Travelers Indemnity Company v. Bernard Nauss   | Insurance subrogation, property damage from flood                                |
| 67   | Mar. 12, 2007 | Maricopa County                | \$5,100,000    | Ramanpreet Singh v. Michael S. Weng, Theodore R. Hofstedt, North Phoenix Orthopedic Surgeons, Inc., John C. Lincoln Health Network   | Medical malpractice  |
| 68   | Aug. 28, 2009 | U.S. Dist. Ct., Dist. of Ariz. | \$5,096,997    | Merchant Transaction Systems, Inc., Post Integrations, Inc., and Lexcel, Inc. v. Nelcela, Inc., Len Campagna, and Alec Dollarhide  | Breach of contract, copyright infringement                                       |
| 69   | Oct. 21, 2013 | U.S. Dist. Ct., Dist. of Ariz. | \$5,000,000    | Kelly Lane and Lynn Lane v. American Family Mutual Insurance Company   | Insurance bad faith  |
| 70   | Feb. 4, 2009  | Maricopa County                | \$5,000,000    | Herman Martinez and Romelia Martinez v. Desert Sky Esplanade, L.L.C. and Michael Manzutto  | Wrongful death, road design  |
| 71   | Mar. 5, 2009  | Santa Cruz County              | \$5,000,000    | Randolph Groom v. Roger Clyne and Susan Clyne  | Securities fraud   |
| 72   | Mar. 17, 2006 | Maricopa County                | \$5,000,000    | Jeremy Ritchie, William Ritchie, Darlene Ritchie and Korbin Underwood v. Emergency Chiropractic, P.C., James Howe, Susan Howe, Scott Krasner, Terri Krasner, Scott Krasner, P.C., Judith Solomon, and Judith Solomon, P.L.C.   | Medical malpractice  |



| Rank | Date           | Court                          | Amount         | Case Name   | Claims   |
|------|----------------|--------------------------------|----------------|---|--|
| 73   | Dec. 16, 2004  | Maricopa County                | \$5,000,000    | John Dawson v. F. Keith Withycombe, Patricia Withycombe and Terry Turner  | Fraud, breach of fiduciary duty, conspiracy  |
| 74   | Mar. 20, 2009  | Maricopa County                | \$4,900,000    | City of Phoenix v. Realnet Holdings, LLC  | Condemnation   |
| 75   | Sept. 30, 2005 | Yavapai County                 | \$4,750,000    | Michael Walters v. Maricopa County  | Wrongful termination   |
| 76   | Feb. 4, 2005   | Maricopa County                | \$4,711,528.38 | Salt River Project Agricultural Improvement District v. Miller Park, L.L.C.   | Condemnation   |
| 77   | Sept. 12, 2008 | Pima County                    | \$4,700,000    | Margaret Jackson v. Tucson Unified School District No. 1  | Injury, bus crash  |
| 78   | Aug. 11, 2006  | Maricopa County                | \$4,600,000    | State of Arizona and Mary Peters v. American Support Foundation, Inc., RCH Investment Company LLC, Selwyn Jacobson, Janke Jacobson, Camelback Community Bank, Honeywell International, Inc., State of Arizona Department of Revenue, Maricopa County Treasurer and Maricopa County  | Condemnation   |
| 79   | Dec. 19, 2008  | U.S. Dist. Ct., Dist. of Ariz. | \$4,526,500    | Aspect Systems, Inc. v. Lam Research Corp.  | Breach of contract   |
| 80   | Jul. 5, 2007   | Maricopa County                | \$4,416,135    | Elmer Parsons v. Anthony Chiappetta   | Breach of contract   |
| 81   | Aug. 11, 2006  | Maricopa County                | \$4,415,000    | Richard Goodman, Cecilia Goodman, City National Bank, and Wortrich Family Trust v. Barness Papas Investments LLC, Ron Barness, Alex Papakyriakou, Greenfield Plaza Investors, L.L.C., Taylor Ranch Retail Investors, LLC, ALRO Investors, LLC, Barness Investment Limited Partnership and Retail Brokers, Inc., Daron Barness, and Roxanne Papakyriakou   | Securities fraud, consumer fraud, breach of fiduciary duty, fraudulent nondisclosure, conspiracy |
| 82   | Jun. 15, 2011  | Maricopa County                | \$4,203,546    | Phoenix Van Buren Partners L.L.C. v. Smith Moulding Wholesale, Inc.   | Breach of contract, lease agreement  |
| 83   | Jun. 15, 2011  | Maricopa County                | \$4,144,651.80 | Arizona Laborers Teamsters & Cement Mason Local No 395 Pension Trust Fund, Arizona Laborers Teamster & Cement Mason Local 395 Defined Contribution Pension Trust Fund, Arizona Operating Engineers Defined Benefit Pension Trust Fund, Arizona Operating Engineers Defined Contribution Pension Trust Fund, Arizona State Carpenters Pension Trust Fund, Arizona State Carpenters Defined Contribution Pension Trust Fund v. Wells Fargo Bank | Breach of covenant of good faith and fair dealing  |
| 84   | Feb. 24, 2004  | Maricopa County                | \$4,024,000    | Thomas Grabinski v. National Union Fire Insurance Co. of Pittsburgh   | Insurance bad faith, breach of contract  |
| 85   | Dec. 12, 2006  | Maricopa County                | \$4,000,000    | Nancy Hartman and George Hartman v. Michelin North America, Inc.  | Product liability  |
| 86   | Dec. 14, 2012  | Maricopa County                | \$3,852,256    | Joseph Winckler v. BNSF Railway Company   | Injury, railroad mishap, FELA  |
| 87   | Nov. 30, 2010  | Coconino County                | \$3,800,000    | Timothy LeClair v. Lumberman's Building Center  | Injury, premises liability   |
| 88   | Apr. 18, 2006  | Maricopa County                | \$3,800,000    | S.O. Asher Consultants, Ltd. v. Barrow Neurological Foundation, Frank Leonesio, Rice Capital Partners, L.L.C., and Daniel Rice  | Breach of contract   |
| 89   | Dec. 7, 2012   | Maricopa County                | \$3,700,000    | Sara Jaynes, Seren Jaynes, and Isaac Ruiz v. Marc Goldblatt, Elizabeth McConnell, Robert Newman, Affiliated Colon and Rectal Surgeons PC, and Paradise Valley Obstetrics & Gynecology Ltd.  | Medical malpractice  |
| 90   | Feb. 22, 2006  | Maricopa County                | \$3,500,000    | Mary Paez v. ABC Capital Corporation, Jesus Villa, Sr., and Jesus Villa, Jr.  | Injury, truck and bike crash   |
| 91   | Feb. 22, 2006  | Maricopa County                | \$3,500,000    | Paul Phillips v. Mayo Clinic Arizona, Mayo Clinic Scottsdale, Mayo Clinic Hospital, Mayo Clinics "In Our Care", Mayo Regional Practices Arizona, Mayo Foundation for Medical Education and Research, Mayo Health Plan Arizona, Mayo Management Services, Inc., Mayo Healthcare Network, Mayo Regional Practices Arizona   | Medical malpractice  |
| 92   | Jul. 27, 2006  | Maricopa County                | \$3,500,000    | Gregory Mein and Erin Mein v. Andrew Glasner and Lisa Glasner   | Injury, drag race  |

# Top 100 Verdicts of the Last Decade

| Rank | Date           | Court                             | Amount      | Case Name   | Claims  |
|------|----------------|-----------------------------------|-------------|---|---|
| 93   | Nov. 1, 2004   | U.S. Dist. Ct.,<br>Dist. of Ariz. | \$3,500,000 | Gametech International Incorporated v. Trend Gaming Systems LLC   | Breach of contract, award on counterclaim           |
| 94   | Apr. 22, 2009  | Maricopa<br>County                | \$3,300,000 | Robin Minium v. Pillar at Scottsdale, Pillar Communities and The Pillar at Scottsdale   | Injury, mold  |
| 95   | Aug. 26, 2011  | Pima County                       | \$3,250,000 | Frances Spitzer, Darrel Spitzer, Doris Spitzer Estes, Kenneth Spitzer, and Elaine Spitzer v. Logix Transportation, Inc. and Larry Hoepner | Injury, trucking crash                              |
| 96   | Dec. 13, 2007  | Maricopa<br>County                | \$3,157,000 | Brian McAchran and Christina McAchran v. Knight Transportation, Inc., Glenn Holloway and Gladys Holloway                                  | Injury, tractor-trailer crash                       |
| 97   | Sept. 11, 2006 | Maricopa<br>County                | \$3,100,000 | Maria Minjares v. State of Arizona, City of Kingman, Ronald Hunter and Penny Hunter   | Injury, road design                                 |
| 98   | Jun. 28, 2005  | Maricopa<br>County                | \$3,071,668 | Procard, Inc., Isadore Kloner, Jr. and Robyn Kloner v. CMYK Digital, L.L.C.   | Defamation, interference with contractual relations |
| 99   | Dec. 12, 2013  | Maricopa<br>County                | \$3,000,000 | Richard Sudberry v. City of Phoenix Police Department   | Wrongful death, gunshot                             |
| 100  | Mar. 12, 2012  | Maricopa<br>County                | \$3,000,000 | Wes Davis v. BNSF Railway Co.   | Injury, railroad mishap, FELA                       |
| 101  | Nov. 17, 2011  | Gila County                       | \$3,000,000 | David Richardson v. Payson Hospital   | Medical malpractice                                 |
| 102  | Jun. 4, 2010   | Maricopa<br>County                | \$3,000,000 | Henry Esparza Jr. v. BCI Coca-Cola Bottling Company of Los Angeles and Kenneth Davis  | Injury, motor vehicle crash                         |
| 103  | Apr. 9, 2010   | Pima County                       | \$3,000,000 | Catherine Kerege, Estate of Harriet Volner, Paul Volner, Rick Volner, and J.D. Volner v. Viscount Suite Hotel                             | Wrongful death, premises liability                  |