



Juries in Arizona were notably more generous in 2005 than in the previous year, turning in 28 verdicts over \$1 million dollars. Every one of this year's top 10 verdicts is larger, by a considerable margin, than the verdict in the corresponding position last year. A particularly vicious double-murder by a delusional drug addict led to the top recovery of \$28 million against a medical center for medical malpractice, according to a survey of reported verdicts.¹ That verdict was nearly triple the highest Arizona verdict in 2004.

Personal injury and wrongful death cases constituted the majority of the highest of 2005 Arizona verdicts. The others included insurance, condemnation, wrongful termination and breach of contract cases.

Comparatively, Arizona continues to trail well behind other states such as Florida, Texas and California in super-sized verdicts. Nationally, the largest verdict in 2005 was for \$1.45 billion (not a typo, that's a "B") in a Florida fraud suit. Now, back to the Grand Canyon State. We begin with a look at the 10 largest Arizona recoveries.

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Arizona Civil Verdicts 2005

Top 10 Largest Arizona Verdicts in 2005

1. \$28,000,000.

Orlando Aviles, Leonard Aviles, Anita Watson, Carmen Tallabas and Ella Lou Saldana v. Maricopa County Medical Center, Maricopa County Superior Court

Rodney Aviles had been mentally unstable for years. In June 1999, he began to deteriorate and was ranting uncontrollably, breaking things, threatening to kill the family's dogs and neighbors' dogs, and finally threatening his brother-in-law with a knife. His family called the police and Aviles was taken to Maricopa County Medical Center for evaluation. He was diagnosed as delusional, psychotic, schizophrenic and probably addicted to cocaine. He was released five days later, and his mother and sister signed off on his release. He was released in part because hospital staffers were convinced that his psychosis was cocaine-induced and that he did not belong in the psych unit. Approximately six hours later, Aviles bludgeoned his

mother Mauricia Aviles and niece Alexia Aviles repeatedly with a blunt object. Plaintiffs alleged that Maricopa Medical Center fell below the standard of care when it discharged Rodney Aviles. Each of the decedent mother's four adult children was awarded \$4 million, and each of the decedent niece's parents was awarded \$6 million. Fault was apportioned as follows: 75 percent to Maricopa County Medical Center, 18 percent to non-party psychiatrist Dr. Carla Denham, 5 percent to Rodney Aviles, 1 percent to decedent mother Mauricia Aviles, and 1 percent to Aviles' sister Anita Watson.

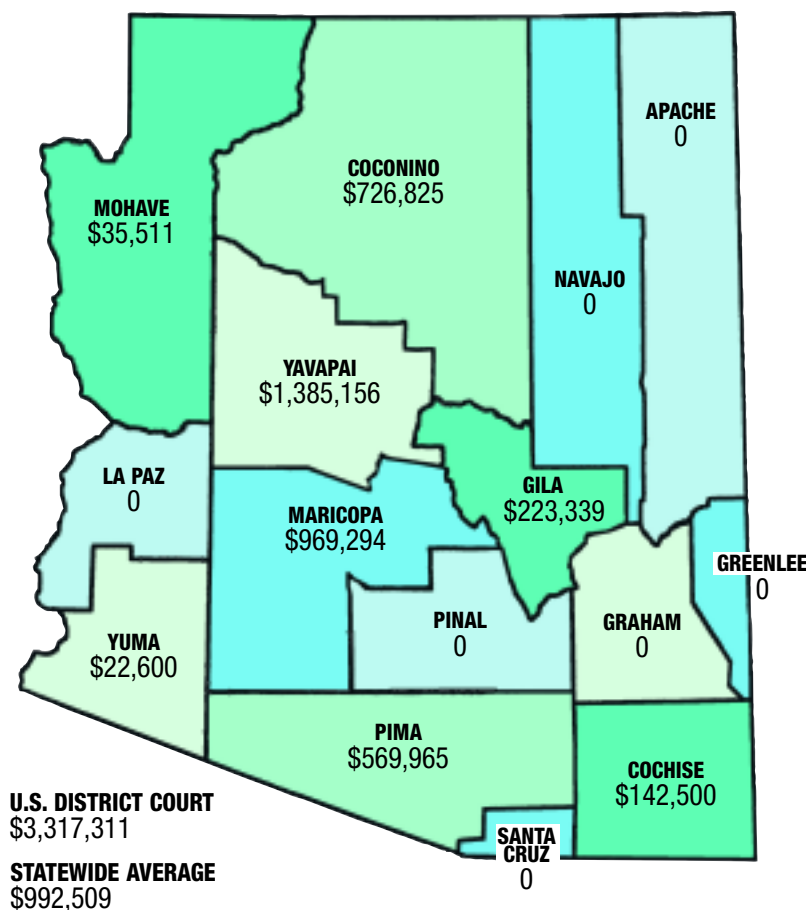
2. \$19,809,028.

Brett Leavey v. Unum Provident Corporation and Provident Life and Accident Insurance, United States District Court for the District of Arizona

Brett Leavey worked as a dentist until 1998, when he abandoned his practice due to emotional disabilities, including depression and substance abuse. He made a dis-

ability claim to Provident Life and Accident Insurance, his insurer. Provident began to pay benefits but sought to have Leavey get cognitive treatment. Leavey resisted, taking the position that he was permanently disabled and that any attempt to improve his condition would only make it worse. In 2001, Provident advised him the claim was closed and benefits would be terminated, although the next month it reversed its position and continued to pay. Leavey claimed that Provident was motivated by money and had oversold professional disability policies. He claimed bad faith and that Provident subsequently lied and tampered with documents. Provident argued that his claim had in fact not been closed, that its correspondence was merely poorly worded, and that it acted reasonably in questioning his care and his failure to return to practice. The jury awarded him \$4 million for pain and suffering, \$809,028 for future benefits and \$15 million in punitive damages. This was the largest reported punitive award of the year in Arizona.

2005 Reported Arizona Verdict Averages by Venue



3. \$18,000,000.

Richard Jones, Ricky Jones and Tristan Jones v. Thomas Moffo and Maryvale Emergency Physicians, Maricopa County Superior Court

Sara Jones was a 22-year-old woman who had a seizure at home and was taken to Maryvale Hospital Medical Center. Plaintiffs alleged emergency physician Thomas Moffo failed to properly diagnose or rule out a seizure disorder and failed to obtain an EEG. Jones died several days later. Plaintiffs alleged wrongful death and medical malpractice. Jones' husband was awarded \$4 million, and her two sons were awarded \$7 million each. Dr. Moffo and Maryvale Emergency Physicians, Ltd. were found collectively 17 percent at fault, non-party Vanguard Health Systems, Inc. (corporate owner of the hospital) was found 43 percent at fault, and non-parties Dr.

Michael Epstein and Medical Neurology, Ltd. (consulting neurologist and his practice group) were found collectively 40 percent at fault.

4. \$8,750,000.

Daniel Storm and Debra Storm v. Robert Yocum, Grey Rock, L.L.C. and Recwest, Inc., Pima County Superior Court

Plaintiffs alleged personal injury resulting from a motorcycle accident. Plaintiff Daniel Storm was operating a motorcycle when RecWest's truck driver Robert Yocum turned left into Storm's path. Storm was operating slightly in excess of the speed limit, was not wearing a helmet and was under the influence of marijuana according to a blood test at the hospital. Storm sustained a closed head injury and cervical spine injury, which rendered him

an incomplete paraplegic. Storm was found 15 percent at fault, and Yocum was found 85 percent at fault. Storm was awarded \$8.5 million, and his wife was awarded \$250,000.

5. \$7,000,000.

Kenneth Felder v. Physiotherapy Associates, Maricopa County Superior Court

Plaintiff alleged personal injury from a batting practice incident. Kenneth Felder was a 27-year-old outfielder for the Milwaukee Brewers' minor league teams. He was undergoing physical rehabilitation at Physiotherapy Associates' office. He undertook batting practice in the pitching rehabilitation area, an area in which Physiotherapy Associates later contended he did not have permission to be. He fouled a baseball that struck a concrete lip

between the batter's cage and the surrounding flooring. The ball bounced backward and struck his left eye. He sustained permanent blurred central vision and a blind spot in his peripheral vision. Felder was found 30 percent at fault and Physiotherapy Associates was found 70 percent at fault.

6. \$6,000,000.

Jennifer Ward v. Misty Golder, James Golder, Paul Ash Management Co., L.L.C. and Saint Thomas Properties, L.L.C., Pima County Superior Court

Misty and James Golder were babysitting Jennifer Ward's 4-year-old daughter at Saint Thomas apartment complex, which was managed by Paul Ash Management Company. The daughter fell into a spa, struck her leg and head, and drowned. Against the corporate defendants, Ward alleged that the lights in the area were inoperable for over one month and management had ignored complaints regarding them. She alleged that the lack of light contributed to the daughter's fall and to the Golders' inability to see her. She alleged negligent supervision against the Golders. Misty Golder admitted liability. The jury found the Golders each 15 percent at fault and Paul Ash Management Company and St. Thomas Properties collectively 70 percent at fault.

7. \$5,825,000.

Chelby Stephens, Cooper Stephens and William Stephens v. John C. Lincoln Health Network, Maricopa County Superior Court

Plaintiff parents alleged medical malpractice for injuries associated with Cooper Stephens' birth at John C. Lincoln Hospital. Mother Chelby Stephens' streptococcal infection was transmitted to her son Cooper during his birth. Plaintiffs alleged that health care providers failed to administer antibiotics to Chelby and delayed appropriate treatment of Cooper for seven hours after his birth. Cooper Stephens developed pneumonia, a pneumothorax, meningitis and brain damage with resulting disorders. Named as non-parties were the mother's obstetrician, Dr.

Charles Clinch, and the on-call pediatrician, Dr. David Scheer. The jury awarded \$3.63 million to Cooper Stephens, \$1.495 million to mother Chelby Stephens, and \$700,000 to father William Stephens. John C. Lincoln Health Network was found 48.5 percent at fault, with the remainder allocated 45 percent to Clinch and 6.5 percent to Scheer.

8. \$5,253,640.60.

California Portland Cement Company v. Grant Goodman and Teri Goodman, Maricopa County Superior Court

Plaintiff California Portland Cement Company alleged the Goodmans, husband and wife, personally guaranteed a debt owed to plaintiff by Rockland Materials for cement. The Goodmans failed and refused to pay on the guarantee, and California Portland Cement alleged breach of contract. The Goodmans claimed they had been released from the guarantee, or alternatively that they only guaranteed a portion of the debt. The jury found that the guarantee covered all the debts of Rockland Materials to California Portland Cement and found that the Goodmans had not been released of their guarantee. The jury found that the Goodmans owed California Portland Cement \$5,253,640.60.

9. \$4,750,000.

Michael Walters v. Maricopa County, Yavapai County Superior Court

Michael Walters was employed as an environmental analyst by Maricopa County. He alleged that he advised its chief financial officer that administrators had used fictional environmental liability figures in reports submitted to bond underwriters and others. He claimed he was fired after doing so and after he threatened exposure unless the mistake was corrected. Maricopa County argued that he was terminated for poor performance. Walters alleged wrongful termination, violation of the Arizona Whistleblower Act, defamation and emotional distress. He sought \$3.2 million in past and future lost wages. The judgment was believed to be the first under Arizona's whistleblower protection law.

10. \$4,711,528.38.

*Salt River Project Agricultural
Improvement District v. Miller Park,*

L.L.C., Maricopa County Superior Court Plaintiff SRP brought a condemnation action. SRP sought a 15.6-acre corridor taken across a parcel of commercial property owned by Miller Park in Buckeye. SRP's appraiser testified that the property's value was \$270,555 and allocated zero in damages to the surrounding property. Miller Park's appraiser testified that the value of the property plus damage to the surrounding area was more than \$4.1 million. The jury awarded \$2,467,790.37 as the fair market value of the property taken plus \$2,243,738.01 as severance damages to the remaining property. Although this was the largest verdict of this type, there were several other sizable awards in the condemnation or eminent domain area, including six other verdicts over \$1 million. This trend may have been a reflection of the rapidly increasing property values in Arizona in recent years.

Averages and Medians by Venue

In several venues in 2005, a few large verdicts drove the averages higher to a great extent. Thus it may be helpful to consider the medians as well as the averages.

To calculate an average, we add up all the numbers, then divide by how many numbers there are. To calculate the median, we place the numbers in value order and find the middle number, where exactly half of the numbers are higher and half are lower. Both the average and the median verdicts are analyzed for each venue below and are summarized in the chart on page 16.

The statewide average verdict² in 2005 was \$992,509, but the statewide median was remarkably lower, at \$70,000. The U.S. District Court for the District of Arizona reported the highest average verdict, of \$3,317,311. This average was largely driven by four verdicts over \$2 million, as the court reported only nine plaintiff's verdicts in total. One of those was the second highest for the year (*see Leavey v. Unum Provident*, above). The median ver-

2005 Reported Arizona Verdict Averages vs. Medians

	USDC	YAVAPAI	MARICOPA	COCONINO	PIMA	GILA	COCHISE	MOHAVE	YUMA	STATEWIDE
AVERAGE \$	\$3,317,311	1,385,156	969,294	726,825	569,965	223,339	142,500	35,511	22,600	\$992,509
MEDIAN \$	\$1,000,000	395,000	60,209	726,825	50,000	85,817	142,500	35,511	22,600	\$70,000

dict was less than a third of the average, at \$1,000,000.

Yavapai County reported the second-highest average verdict, of \$1,385,156. It also had a relatively small number of reported verdicts, one of which was for \$4.75 million (see *Walters v. Maricopa County*, above). Yavapai County's median verdict was \$395,000.

Maricopa County reported the third-highest average verdict of \$969,294. This figure was extremely close to the statewide average of \$992,509, likely in part because Maricopa County rendered nearly a third of all the verdicts in the state. Maricopa County produced the number-one verdict of the year, of \$28 million (see *Aviles v. Maricopa County Medical Center*, above) as well as the number-three verdict, of \$18 million (see *Jones v. Moffo*, above). There were also many smaller verdicts, making Maricopa County's median verdict only \$60,209.

Coconino County reported two plaintiff's verdicts, making its average and median both \$726,825. Pima County reported the next-highest average verdict at \$569,965, with a median of \$50,000. The average verdict for Gila County was \$223,339, and its median was \$85,817. Next in line was Cochise County with both an average and median of \$142,500, followed by Mohave County with both an average and median of \$35,511. Yuma County reported the lowest average and median verdict in the state of \$22,600.

Navajo County reported three defense verdicts and no plaintiff's verdicts. Graham County reported one defense verdict and no plaintiff's verdicts. No civil verdicts were reported in Apache, Greenlee, La Paz, Pinal or Santa Cruz Counties. This was especially remarkable as to Pinal County, which reported the highest average verdicts in 2004. The average by venue

is highlighted in the chart on page 12.

Federal Court Slightly Higher in Defense Verdicts

Federal court is generally viewed as a venue more favorable to civil defendants. In the United States District Court for the District of Arizona in 2005, defendants prevailed in 53 percent of the reported verdicts. That figure is indeed higher than the statewide average of 47 percent defense verdicts. But as in 2004, it again was not markedly higher. Thus in 2005 verdicts, defendants did not prevail in Arizona federal court at a statistically greater rate than in state court. And as noted above, when plaintiffs prevailed in this court, they achieved some of the largest verdicts of the year.

Punitive Awards

Punitive damages were rare, awarded in only 11 cases. When imposed, however, they were generally a considerable amount. The punitive awards ranged from a low of \$7,500 to a high of \$15 million. At least as to the ratio of compensatory to punitive damages, most of the awards appeared to follow the guidelines outlined in *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408 (2003), and *Bains LLC v. Arco Products Co.*, 405 F.3d 764 (9th Cir. 2005). Degree of reprehensibility and legislatively established penalties for similar conduct are other factors to be considered.

Reductions for Comparative and Non-Party Fault

Arizona juries made allocations of fault in many personal injury cases in 2005. After accounting for these reductions, verdicts were reduced by an overall 32 percent in personal injury and wrongful death cases. In the most notable instance, a verdict was reduced by 90 percent when that percent-

age of fault was allocated to a non-party. This demonstrates the striking impact these procedures can have on judgments.

Commercial Verdict Average and Median Higher Than Personal Injury

In 2005, Arizona commercial verdicts were again higher than personal injury verdicts in their averages and medians. The average commercial verdict was \$1,122,881, with a median of \$112,983. Such business or commercial cases included breach of contract, breach of fiduciary duty, fraud, takings and property damage.

The average personal injury verdict was not far behind, at \$931,098, although its median was lower at \$50,000. These individual injury cases included bodily injury and wrongful death matters. In terms of volume, there were almost 2.5 times as many bodily injury verdicts as there were commercial verdicts. There was much less disparity in averages than last year, when the average commercial verdict was nearly twice that of the average personal injury verdict.

Significant Defense Verdicts

Admittedly, the "significance" of defense verdicts is a more subjective area. Defense verdicts can be significant for all sorts of reasons. Those highlighted here are those in which the claimed damages were high, or those in which liability appeared strong based on the given facts. In no particular order, here are a few of the year's significant defense verdicts:

Terry Henderson, Timothy Henderson, Kendra Henderson, and Charles Henderson v. Kimberly Qualitycare, Inc., Kimberly Home Health Care, Inc., Lynn Coleman and Chip Coleman, Maricopa County Superior Court

This was the third trial of this medical mal-

practice case, in which a previous verdict had been \$10 million. Decedent Kenneth Henderson was a bank vice-president who underwent spinal surgery in 1993 and was rendered a paraplegic during surgery. His home caregiver, Lynn Coleman, was alleged to have had a sexual relationship with him, which continued after her contract was terminated. In 1994, Henderson died of an overdose of medication. Plaintiffs, his wife and children, alleged defendants fell below the standard of care with respect to his home health care. They asked the jury to award \$10 million. Defendants maintained Henderson either died of an accidental overdose or committed suicide because of his paralysis.

Veronica Hunter, Betty Melgren and Alice Semon v. Gordon Atteberry dba Sign-Inn Lounge, Mohave County Superior Court
Three retired women were driving home from Nevada when they were struck head-on and injured by a truck operated by non-party Heintz. At the time of the collision, Heintz had a blood-alcohol level of approximately 0.22. Plaintiffs alleged Heintz was overserved alcohol at the Sign-Inn Lounge, where he drank approximately 180 ounces of beer in a little more than two hours. Atteberry contended that Heintz consumed at least some of the alcohol at another location and left the lounge two and a half hours before the accident.

Melvina Johnston v. RRSP I-10 Wilmot, Inc., dba Travel Inn, Pima County Superior Court

In this premises liability case, the decedent hotel guest fell from the top of the hotel stairs to the parking lot, which resulted in his death. Plaintiff, the decedent's wife, alleged that the owners failed to repair the stairs. She asked the jury to award \$10 million. Defendant Travel Inn admitted

the stairs were unreasonably dangerous but argued there were numerous causes for the fall.

Lydia Caudillo v. City of Phoenix and Lowell Spalla, Maricopa County Superior Court

In this civil rights and excessive force case for wrongful death, off-duty Phoenix police officer Lowell Spalla shot the decedent in the back of the head and killed him. The decedent was alleged to be an innocent bystander to a fight. Plaintiff asked the jury for \$1 million. The City of Phoenix and Spalla alleged that there was no time for Spalla to announce or warn of his presence and that the decedent had pointed a gun at the crowd.

Standard Fire Insurance Company v. Classic Coatings Corporation and Spectrum Paint Company, Yavapai County Superior Court

This was a subrogation action in which plaintiff Standard Fire Insurance alleged that rags soaked in a stain product made by Classic Coatings and sold by Spectrum Paint spontaneously combusted and caused a fire that burned down a house. Plaintiff sought reimbursement of its payment for \$1,133,753 in property damage. Classic and Spectrum defended that the cause of the fire was undetermined and that arson or an electrical malfunction could not be ruled out.


Stephanie Pena, Albert Lara and Michelle Lara v. Ford Motor Company, Maricopa County Superior Court.

In this product liability case, decedent Silveria Olivar was driving her Ford Expedition when it was struck by another vehicle and rolled over. Olivar was ejected and died. Plaintiffs, her children, alleged that because Olivar habitually wore her

seat belt, it must have "false latched" when it was buckled and then unlatched in the collision, allowing her to be ejected. Plaintiffs asked the jury to award \$3.6 million. Ford Motor Company demonstrated that the seat belt worked properly following the crash. Despite the habit testimony, Ford also presented evidence that Olivar was late for work and speeding when the crash occurred and simply never buckled up that day.

Research Corporation Technologies v. Microsoft Corporation, United States District Court for the District of Arizona
Plaintiff Research Corporation Technologies claimed that Microsoft Corporation infringed six of its patents related to a "blue noise mask" technology for the creation of images displayed by Microsoft's Windows program. Plaintiff sought royalties of \$600 million, plus treble damages for willful patent infringement. Microsoft won summary judgment as to half of the patents. After a bench trial, the judge ruled that the remaining three patents were unenforceable due to inequitable conduct by the patent applicants.

Conclusion

In describing statistics, W. Allen Willis defined them as "a body of methods for making wise decisions in the face of uncertainty." Uncertainty, particularly in litigation, is to some degree inevitable. In facing it, corporate clients frequently ask for an evaluation of the trial venue in making case assessments. Plaintiffs are interested to know about how others have fared recently in cases similar to theirs. Recent verdict trend information helps our clients, and ourselves, in making the wisest decisions and recommendations that we can. 

endnotes

1. This article analyzes 313 civil verdicts reported to date from the Superior Courts of Arizona and the United States District Court for the District of Arizona in 2005. Although the great majority were jury verdicts, some were bench trials. This article does not analyze or include cases that settled before or during trial, mistrials, cases tried only on liability or comparative fault issues, judgments as a matter of law, criminal cases or cases not yet reported. The judgments analyzed do not include costs, fees or reductions, which may have been established later. This article makes no comment on the merits of the claims or defenses, or the lawyering abilities of those involved, in these cases.
2. 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.