

# Arizona Civil Verdicts: 2017

**“The truth has legs; it always stands. When everything else in the room has blown up or dissolved away, the only thing left standing will always be the truth.**

**“Since that’s where you’re gonna end up anyway, you might as well just start there.”<sup>1</sup>**

Let’s start there. Here are some truths about Arizona verdicts. We’re trying fewer of them. Punitive awards are scarce, and were even rarer this year. And for the first time since at least 2004, there were more defense verdicts than plaintiff’s verdicts in a single year.

Here are 2017’s leading verdicts. The largest Arizona verdict in 2017 of \$15 million was a medical malpractice case in which a patient died after being injected with a blood-clotting drug. The highest Arizona verdicts also included a dram shop case resulting in serious injuries, an insurance bad faith case over disability benefits, an airport runway project contract case, and a medical malpractice case for delay in diagnosing cancer. They also included cases about workplace accidents at a mine and on a ladder, bank loans, a modified rifle, and a mobile home park purchase.

Arizona juries gave only one verdict over \$10 million, and 11 verdicts between \$1 million and \$10 million. Four of the top-most verdicts were from Pima County, three from federal court, and three from Maricopa County. Eight of the 10 highest awards were given by juries, and two in bench trials.

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 we completed our writing.<sup>2</sup> The case numbers are 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>3</sup> The focus here is on how the Arizona juries and judges decided these cases, and what they awarded.



**\$15,000,000**

*Esmeralda Tripp v. University of Arizona Medical Center, State of Arizona, Arizona Board of Regents, University of Arizona College of Medicine, Olga Gokova, and Todd Alter, Pima County Superior Court, C2014-4811<sup>4</sup>*

Esmeralda Tripp, 42, had a history of deep-vein thrombosis and pulmonary emboli and had taken Coumadin for many years. On Sept. 13, 2013, her blood testing showed higher-than-normal levels of Coumadin, which means the blood is too thin, and her primary doctor told her to go to the hospital. She had previously been treated in such situations with Vitamin K, fresh frozen plasma, or both. However, the University of Arizona Medical Center's doctors Olga Gokova and Todd Alter ordered an injection of Profilnine, a drug that promotes blood clotting. Tripp's conservator alleged that neither doctor had knowledge of or had used the medication before, and that they fell below the standard of care in ordering it. Tripp's conservator also alleged that the hospital guidelines say that Profilnine

should be used only if the patient has serious or life-threatening bleeding or requires emergency surgery, which she did not. Two hours after the injection, Tripp had a stroke and heart attack and never awakened. She sustained brain damage due to depressed oxygen levels, and remains in a persistent vegetative state. The hospital and doctors denied that Profilnine caused her stroke or heart attack, which were more likely due to her underlying conditions. They also defended that Tripp gave inaccurate medical history, and that they acted appropriately and with sound medical judgment based on the information. The jury awarded \$15 million and found Tripp 20 percent at fault. This was the largest medical malpractice verdict from Pima County since at least 2004.

**\$7,903,494.58**

*Mark Dupray and Ashley Dupray v. JAI Dining Services (Phoenix), Inc. and Pedro Panameno, Maricopa County Superior Court, CV2014-007697<sup>5</sup>*

This was a dram shop and negligence case.

Mark Dupray was driving a scooter when he was rear-ended by Pedro Panameno who was driving a car at up to 50 mph. Dupray was thrown under the car and dragged for several feet. Panameno's blood alcohol level was 0.154 percent, and he served 37 months in prison for aggravated assault for the collision. Dupray alleged that Panameno drank at least 11 beers in three hours at JAI Dining's bar and that the bar kept serving him after it should have stopped. Among other injuries, Dupray sustained a cervical fracture, right arm fracture with deformity, and skull fracture, and contended he will need more surgeries and that he lost future income of nearly \$2 million. JAI Dining defended that Panameno did not exhibit any signs of obvious intoxication, and when he left its bar he was a passenger in a friend's vehicle. JAI Dining contended that Panameno was 100 percent at fault. Panameno did not appear at trial. The jury awarded \$3,503,494.58 in compensatory damages and found Panameno 60 percent at fault and JAI Dining 40 percent at fault. The jury also awarded \$4 million in punitive damages against JAI Dining (the largest pu-

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nitive award of the year against a single party), and \$400,000 punitive damages against Panameno.

**3** **\$6,533,308.85**  
*Benjamin McClure v. C.C. Services Inc. and Country Life Ins. Co.*, United States District Court for the District of Arizona, CV15-02597<sup>6</sup>

This was an insurance bad faith case. Benjamin McClure sustained a traumatic brain injury in an accident. He developed severe depression, was hospitalized multiple times as suicidal, and was determined to be unable to work. His disability company, Country Life, paid disability benefits for one year and then terminated the claim. In its termination letter, Country Life said that it had carefully reviewed extensive medical records and determined there was no evidence of cognitive or mental health impairments. Country Life had not gathered or reviewed recent medical records including those that certified his disability. CC Services was an affiliated company that administers Country Life's claims. Country Life and CC Services defended that McClure's disability did not start until after his claim had been terminated, and that they acted reasonably. They argued that it was unlikely his head injury caused his symptoms and conditions but rather than they were attributable to a psychiatric syn-

drome. The jury awarded \$1,533,308.85 in compensatory damages. The jury awarded \$2.5 million in punitive damages against Country Life and \$2.5 million in punitive damages against CC Services.

**4** **\$3,324,970**  
*Meadow Valley Contractors, Inc. and Town of Springerville v. C&S Engineers, Inc.*, Maricopa County Superior Court, CV2015-013325

The Town of Springerville hired C&S Engineers, an architecture and engineering firm, to design the Springerville Municipal Airport's runway resurfacing project and act as construction manager. Meadow Valley Contractors and the Town of Springerville alleged that C&S' plans and specifications were defective and caused them to incur extra expenses. They also alleged that C&S Engineers concealed information about problems that surfaced, refused to consider alternatives, and refused to cooperate to resolve the design deficiencies. C&S Engineers defended that its plans and specifications were not defective, and denied that it concealed any material information. The jury found for the Town of Springerville on breach of contract and indemnity and awarded \$2,814,970. The jury found for Meadow Valley Contractors on its claims for negligent misrepresentation and neg-

ligence and awarded \$500,000. The jury found C&S Engineers 86 percent at fault and Meadow Valley Contractors 14 percent at fault on those claims. C&S Engineers counterclaimed against Meadow Valley Contractors for negligence in its efforts to build the project as designed, and alleged that the plans and specifications were defective. The jury found for C&S Engineers on the counterclaim, and awarded \$10,000. The jury found C&S Engineers 86 percent at fault and Meadow Valley Contractors 14 percent at fault on the counterclaim.

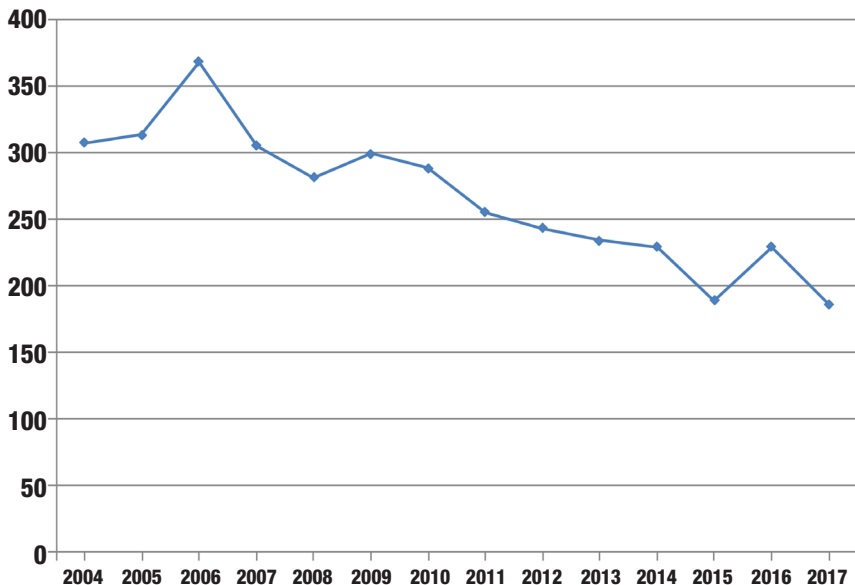
**5** **\$2,556,000**  
*Steven Cooper v. United States of America Department of Veterans Affairs*, United States District Court for the District of Arizona, CV15-02140

Steven Cooper, 40, a U.S. Army Veteran, claimed that he had delays and cancellations in appointments at the VA in Phoenix and that when he was finally seen in 2011 he was not properly examined. Cooper contended that the nurse practitioner who saw him failed to order testing, failed to inform him of abnormal results or discuss options, and failed to timely diagnose prostate cancer. He alleged that if his cancer had been diagnosed in 2011 it was treatable with a simple surgical procedure. However, his cancer was not diagnosed for another year, by which time it had metastasized and was terminal. The United States defended that it was impossible to tell whether his cancer would have confined to his prostate if diagnosed in 2011, and that the nurse practitioner did not find any indications of cancer in 2011. In a bench trial, the court awarded \$2,556,000.

**6** **\$2,550,000**  
*William Baughn v. Staker & Parson Companies, Inc.*, Pima County Superior Court, C2015-0432<sup>7</sup>

William Baughn was a truck driver working for non-party BDR Transport at a mine. Rocks became lodged between the dual tires on the trailer he was operating. When he attempted to get the rocks out, the tire exploded. Baughn argued that Staker & Parson, as the mine owner, failed to instruct

**NUMBER OF ARIZONA VERDICTS**





him on what to do if rocks became lodged between tires, inadequately maintained roads in the mine pit, and overloaded and unevenly loaded trucks. He sustained a torn esophagus, a brain injury with visual and speech impairments, trauma to his eye and face, and multiple surgeries. Staker & Parson defended that it would not have advised BDR Transport about procedures because it was a subcontractor and may have had its own procedures. Staker & Parson also argued that Baughn's physical complaints had resolved. The jury awarded \$2,550,000. The jury found Staker & Parson 60 percent at fault, Baughn 25 percent at fault, and BDR Transport 15 percent at fault.

**7** **\$2,292,398.70**  
*Bank of the West v. Trisports Com, L.L.C., Seton Claggett and Deborah Claggett, Pima County Superior Court, C2013-1286*

**2017 ARIZONA PLAINTIFFS' VERDICT AVERAGE BY VENUE**

VENUE	Average Plaintiff's Verdict	Median Plaintiff's Verdict	Percentage of Trials Won by Plaintiffs
Statewide	\$639,026	\$61,100	48
Pima County	\$1,984,966	\$500,000	65
United States District Court for the District of Arizona	\$1,302,553	\$408,036	35
Maricopa County	\$321,984	\$31,400	49
Yavapai County	\$156,874	\$156,874	100
Navajo County	\$395,000	\$395,000	100
Gila County	\$15,000	\$15,000	100

Seton Claggett and Deborah Claggett took loans from Bank of the West. Their financial condition deteriorated and Bank of the West called the loans, which the Claggetts failed to pay off. Bank of the West asserted it had no obligation to renew or extend the maturity dates. It sued for breach of contract and breach of guaranty to recover the principal, interest, costs, attorneys' fees, and punitive damages. The Claggetts counterclaimed for approximately \$5 million. They alleged that Bank of the West

failed to communicate concerns about their financial condition before calling the loans. The Claggetts also alleged that the Bank fraudulently or negligently misrepresented the status of its decision and that it promised that the first loan would be renewed and increased and second loan would be termed out. After a bench trial, the court awarded the principal amount of the loans of \$2,292,398.70. The court declined to award punitive damages and declined to award on the counterclaim.

**8 \$1,600,000**

*Jon Stock v. Caylor Construction Corp. and Guillermo De La Vara, Pima County Superior Court, C2014-2461*

Jon Stock, a 20-year-old electrician, was standing on a ladder removing metal when Guillermo De La Vara grabbed his leg. The action startled Stock, which caused angle cutters to be pulled into his right eye. Stock alleged negligence against De La Vara and De La Vara's employer, Caylor Construction. Stock had a severe penetrating injury of the cornea, iris and lens of his eye, and lost vision. He required transplants of a cornea, and of an artificial lens and artificial iris (the latter experimental procedures). Caylor Construction defended that such conduct was prohibited by its company policies and that De La Vara was not acting in the course of his employment. De La Vara claimed that he did not touch Stock. The jury awarded \$1,600,000. The jury found Caylor Construction and De La Vara 80 percent at fault, Stock 10 percent at fault, and Stock's non-party employer 10 percent at fault.

**9 \$1,500,000**

*Lynial Ashford v. Gunwright, L.L.C. and Accuwright Industries, L.L.C., Maricopa County Superior Court, CV2014-002791*

Lynial Ashford, a gunsmith, was working on a modified Remington 700 rifle. Accuwright is the patent holder of a titanium cold-spray process. Gunwright used Accuwright's titanium cold spray and equipment to create a custom barrel. When Ashford test-fired the rifle, it exploded in his hands. Ashford alleged in this product liability case that the modified barrel did not have the strength to withstand the internal forces. Ashford's left hand and wrist sustained severe traumatic damage and required amputation and a prosthetic hand. Gunwright and Accuwright argued Ashford was negligent in his testing and gunsmithing. Accuwright defended that the smokeless powder used created internal pressure that was too high for the modified barrel to contain, and that the powder would have caused an unmodified steel barrel to fail as well. The jury

awarded \$1,500,000. The jury found the non-party seller 55 percent at fault, the non-party owner of the barrel 20 percent at fault, Ashford 20 percent at fault, Gunwright five percent at fault, and Accuwright zero percent at fault.

**10 \$1,344,808.69**

*Camptown of Show Low, L.L.C. and Gerrie Cooley v. James E. Davison Revocable Trust Dated 3/26/03 and Eileen Davison,*

*United States District Court for the District of Arizona, CV15-08145*

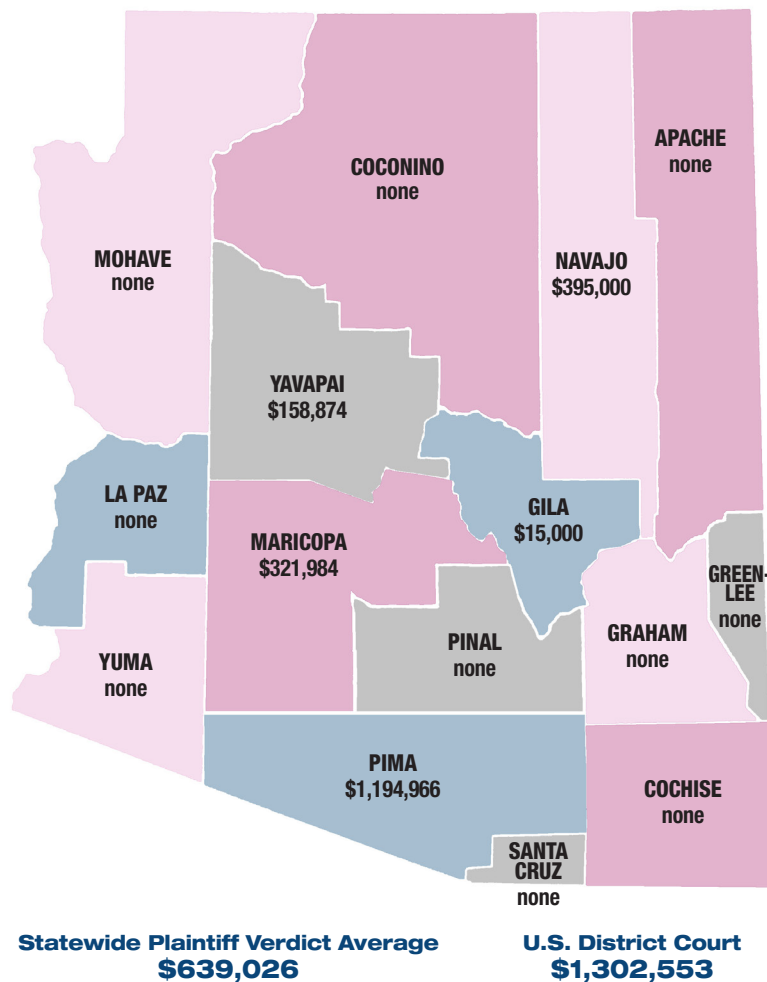
This case arose out of the sale of Camptown Mobile Home Park. Plaintiff Gerrie Cooley bought Camptown from the James E. Davison Revocable Trust Dated March 26, 2003 for \$3.5 million. The sale included the business and all of its assets including trailers, buildings, equipment, lease agreements and carryback loans. Cooley hired Eileen Davison to continue to manage the property. Cooley alleged that Davison and the Trust made material misrepresentations

2017 ARIZONA PLAINTIFF'S VERDICT AVERAGES BY VENUE

about the business' physical condition and nature of its assets. Cooley asserted that they failed to provide financial information, and embezzled and/or converted rents and other money and property. Davison and the Trust defended that they properly disclosed issues regarding the property, and that Cooley did not do adequate due diligence or an inspection of the property. The jury found for Cooley on claims of fraud, conversion, civil conspiracy, aiding and abetting, breach of contract, breach of covenant of good faith and fair dealing, and misrepresentation. The jury found the Trust 70 percent at fault, Cooley 30 percent at fault, and Eileen Davison zero percent at fault.

**Defendants Won 52 Percent of the Trials**

Here is something that had never happened in 14 years of tracking Arizona verdicts. In 2017, there were more *defense* verdicts reported than plaintiff's verdicts. That was a first since this annual article launched in 2004. Statewide, defendants prevailed in 52 percent of the trials, and plaintiffs prevailed in 48 percent. Over the past 10 years, the statistical chance of a plaintiff prevailing in any given civil case has remained within the range of 48 to 66 percent.



**Venue Comparison**

Jury awards consistently vary by county in Arizona. Averages and medians<sup>8</sup> for plaintiffs' verdicts in each venue are shown in the table on p. 22, and also on the map at right.

The statewide average plaintiff's verdict<sup>9</sup> in 2017 was \$639,026. That was somewhat lower than the average in 2016. The statewide median plaintiff's verdict was \$61,100.

Pima County had an average plaintiff's verdict of \$1,984,966. That was almost 10 times higher than 2016's average, and was largely buoyed by this year's number-one verdict. It had a median of \$500,000, over double from the year before.

The average 2017 plaintiff's verdict in United States District Court for the District of Arizona was \$1,302,553. The median was \$408,036. Defendants won 65 percent of the federal court trials.

Maricopa County's average was \$321,984. Its median was \$31,400. Maricopa County has by far the most filings and most reported civil verdicts, year over year.

In 2017, it had 72 percent of all reported verdicts, and three of the top 10 plaintiff verdicts this year.

Yavapai had two verdicts whose average and median were \$156,874, and had none for the defense. Navajo and Gila counties had one plaintiff's verdict each and no defense verdicts. Yuma County had no plaintiff's verdicts and three defense verdicts. Santa Cruz County had no plaintiff's verdicts and one defense verdict. And the following counties reported no verdicts for either side: Apache, Cochise, Coconino, Greenlee, Graham, La Paz and Pinal.

**Punitive Awards**

Arizona juries gave only four punitive awards in 2017, fewer than in recent years. The largest award was in the *Dupray* case in Maricopa County (No. 2 above) for \$4 million against JAI Dining, plus \$400,000 punitive damages against Panameno. A second punitive award was for a total of \$5 mil-

lion (split between two defendants) in the *McClure* case (No. 3 above) in the United States District Court for the District of Arizona. The other punitive awards were in a gender discrimination case in federal court for \$500,000, and in a business contract case in Maricopa County for \$112,500.

**Business Verdicts and Personal Injury Verdicts**

The average business plaintiff's verdict was \$669,299, with a median of \$150,704. Such cases included breach of contract, breach of fiduciary duty, fraud, insurance bad faith, employment, condemnation, and property damage. Of all of the business cases tried in 2017, plaintiffs won 51 percent of them.

The average plaintiff's personal injury verdict was \$616,985. The median was \$31,461. The cases in this category had one or more person who was physically injured. They included motor vehicle accident injury, product liability, medical malpractice,

premises liability, and wrongful death cases. These kinds of cases made up 72 percent of all the cases tried to verdict in 2017. Of all of the personal injury cases tried in 2017, defendants won 53 percent of them.

## Still Declining Number of Verdicts

The number of Arizona cases that are tried all the way to verdict declined starting in 2009. The number of verdicts is still declining (see table on p. 20). Each year since 2009 except for 2016, the number of trials dropped. This trend is sensed in many of our practices, but it's remarkable to see it in the hard numbers that tell the story.

The ABA Task Force on the Vanishing Jury Trial<sup>10</sup> found these reasons contribute to fewer jury trials:

- The increasing use and success of alternative dispute resolution
- The increasing scope, time and expense of discovery
- Delay in resolution of cases by jury trial and heavier court dockets
- The uncertainty and unpredictability of

jury verdicts, or perception of the same

- The increased filing and granting of dispositive motions
- The lack of trial experience by lawyers and judges

Are we reaching a tipping point? We have to believe that at some point the decline will level off. How low can it go? And what might reverse this trend?

## Significant Defense Verdicts

We highlight noteworthy defense verdicts below in the interest of equal time and coverage. These are from a variety of different types of cases in which the claimed damages at trial were high. Here are a selection of 2017's significant Arizona defense verdicts:

**a** *DBT Yuma, LLC, et al. v. Yuma County Airport Authority*, Yuma County Superior Court, CV-201001309<sup>11</sup>

DBT Yuma had been doing business as Lux

Air, a fixed-base operator at the airport. It leased property from Yuma County Airport Authority to operate an aircraft refueling facility. The Yuma County Airport Authority had Lux Air evicted from the airport and seized its property because the FBO was behind on its rent and it failed to comply with the Notice of Default. Plaintiffs alleged breach of contract and covenant of good faith and fair dealing. They sought damages in lost assets plus compensation for damages they claimed through the forfeiture of the 30-year lease. They asked for \$50,072,420 at the bench trial. Lux Air claimed it was not properly noticed and the lease was still valid. Yuma County Airport Authority counterclaimed for misconduct, bad faith, negligence and assumption of the risk, claiming it had a valid right to evict the Lux Air entities and seize their property. The airport authority counterclaimed for costs incurred, loss of rent, and damages suffered, including the FBO's failure to honor its agreement to construct a new general aviation terminal. Yuma County Airport Authority was awarded \$1,699,556.61 in principal and pre-judgment interest on its counterclaim.

**b** *Kevin Fuciarelli v. City of Scottsdale, Aaron Good and Edward Chrisman*, United States District Court for the District of Arizona, CV14-01078

This personal injury and Section 1983 civil rights violation case arose out of a commercial landlord-tenant dispute involving Scottsdale police officers Aaron Good and Edward Chrisman. The landlord, Kevin Fuciarelli, locked a commercial property with a non-party's personal belongings inside, including house, mailbox and car keys. When the non-party attempted to recover the belongings, a dispute arose, and the officers were called to the scene. Fuciarelli alleged the officers improperly inserted themselves into a civil landlord-tenant dispute, that the officers were poorly trained and conducted landlord-tenant research during the call instead of performing an investigation, and that Good used excessive force to detain him. Defendants asserted that they suspected a theft of property was occurring and that Chrisman properly and reasonably researched whether Fuciarelli had the right to detain the property, and that reasonable force was necessary to detain Fuciarelli when he approached Good in a threatening

manner. At trial, Fuciarelli sought \$196,000 in past and future medical expenses, \$25 million in lost past and future earnings, and compensatory and punitive damages.

**C** *Tashiana Adams v. Affiliated Surgical Associates, P.C., et al.*, Maricopa County Superior Court, CV2013-009939<sup>12</sup>

Tashiana Adams brought this wrongful death medical malpractice claim alleging multiple health care providers fell below the standard of care during an outpatient lap band surgery, causing the death of her mother, April Adams, due to excessive bleeding and hypovolemic shock. Adams alleged the surgeon, Dr. Terry Simpson, failed to perform adequate pre-operative work, failed to provide adequate post-operative care, failed to treat post-operative bleeding and shock, failed to select the appropriate surgery facility, and failed to transfer the patient to a full-service hospital. She also alleged that Dr. Ali Askari, a cardiologist, failed to perform a nuclear stress test study and overlooked a pre-surgery echocardiogram anomaly, both of which would have precluded the procedure. She alleged the primary care doctor, Dr. Dat Tran, failed to review a non-party cardiologist's surgery precluding nuclear stress study demonstrating abnormal blood flow. Defendants alleged that April Adams was not forthcoming with her medical history, including the abnormal nuclear stress test performed by the non-party cardiologist, and failed to inform them of two previous bariatric surgeries that would have made the surgery too risky to perform. Simpson also argued the surgery facility was sufficient for outpatient surgeries. Adams asked the jury for a \$10 million award.

**d** *Stephanie Hallford-Brown v. Veolia Transportation Services, Inc. and Kenneth Van Dyke*, Maricopa County Superior Court, CV2013-007219<sup>13</sup>

This was a personal injury and negligent training/supervision case. Stephanie Hallford-Brown alleged that a bus driver employed by Veolia Transportation Services, Kenneth Van Dyke, negligently ran over her lower legs when he quickly pulled away from a bus stop, and without looking properly toward the stop. She also alleged Veolia failed to properly train and supervise Van Dyke. Veolia and Van Dyke denied liability,

arguing that Van Dyke properly searched the area for hazards and did not see her get up and run to the bus after he closed the doors because he shifted his attention to merging with traffic. Brown sought \$9.8 million at trial for past and future medical damages, lost wages, and compensatory damages.

**e** *RES-AZ Kingman, LLC v. Elizabeth Provenza-Neth*, Mohave County Superior Court, CV2011-00366

This was a breach of contract case in which RES-Kingman, LLC alleged Elizabeth Provenza-Neth, as guarantor of three commercial loans, failed to pay the loans' outstanding principal balance of \$5,076,696.02. RES-AZ Kingman argued that Provenza-Neth guaranteed the loans when she used a signature stamp or ratified or authorized the use of her signature stamp, on the guaranties. Provenza-Neth argued to the contrary, and that others with motive to secure the loans had access to her signature stamp. RES-Kingman, LLC sought \$6,494,169.66 at trial.

**f** *Patrick Fitzgerald v. Compunchers Smokehouse and Saloon, LLC, dba Buffalo Chip Saloon and Steakhouse*, Maricopa County Superior Court, CV2014-009325<sup>14</sup>

This was a premises liability case. Patrick Fitzgerald, an electrician, claimed the Buffalo Chip Saloon and Steakhouse negligently allowed him to ascend a ladder that did not meet OSHA and ANSI standards, and as a result he fell and suffered spinal injuries that precluded him from working as an electrician. The Saloon argued that Fitzgerald was wholly at fault because he had a blood alcohol level of 0.29 when he ascended the ladder, and that the ladder met or exceeded all OSHA and ANSI standards. Fitzgerald asked the jury to award him \$3 million, minus 25 percent for his comparative fault for climbing the ladder while intoxicated.

**g** *Michael Murray v. Mayo Clinic Arizona*, United States District Court for the District of Arizona, CV-01314<sup>15</sup>

This was an Americans with Disabilities Act and Family and Medical Leave Act case,



arising from the termination of Dr. Michael Murray, an anesthesiologist, from his employment at Mayo Clinic Arizona. After an altercation in an operating room, Mayo Clinic Arizona put him on administrative leave, and he subsequently took six weeks of medical leave. He was later released to return to work without restrictions. Upon return, Mayo Clinic Arizona completed its review of the operating room incident and terminated Mur-

ray because his conduct toward a co-worker violated company policies. Murray argued Mayo Clinic Arizona fired him for taking a FMLA leave and because it regarded him as disabled, suggesting he may have service-related PTSD. He asked the jury for \$1,280,000 in lost wages, an equal amount in liquidated damages, and reasonable compensatory and punitive damages.

## Where Are They Now?

Here are significant appellate opinions from 2017 about past years' notable verdicts:

*Veronica Ochoa-Valenzuela v. Ford Motor Co.*, United States Court of Appeals for the Ninth Circuit, CV15-16388. This was Ochoa's appeal of a 2015 defense verdict in a rollover crash case. In a memorandum decision, the Ninth Circuit affirmed in all respects. It affirmed the trial court's rulings on evidentiary issues such as cross-examination of an expert and a comment in closing argument. It found the trial court did not err in excluding the testimony of a plaintiff's expert or in excluding certain company documents and a study by the Insurance Institute for Highway Safety. The Ninth Circuit found that the jury instructions were proper.

*Dawn Nazos v. City of Phoenix and Jesus Ambrocio*, Arizona Court of Appeals, Div. 1, CA-CV 16-0511. This was Nazos' appeal of a 2016 defense verdict in a wrongful death motor vehicle accident case. Nazos argued that the trial court erred in admitting the testimony of multiple independently retained experts. In a memorandum decision, the Court of Appeals affirmed and held that the trial court has broad discretion to determine the admissibility of expert testimony. The Court of Appeals affirmed the admission of two experts' testimony (one on accident reconstruction and the other on down-

The number of Arizona cases tried all the way to verdict declined starting in 2009. They're still declining.

load of vehicle module data). The opinion held that, "when the status of an expert witness does not fit squarely within a rule-based category, the trial court has discretion to regulate the presentation of testimony at trial." Nazos also argued that Ambrocio was negligent per se and that the defense verdict was contrary to law. The Court of Appeals found sufficient evidence to support the jury verdict and affirmed on that point.

*Pierre Vanoss et al. v. BHP Copper, Inc.*, Arizona Court of Appeals, Div. 2, CA-CV 2017-0033. This was Vanoss' appeal of a 2016 defense verdict in a mine construction site wrongful death case. Vanoss argued that the trial court erred in various respects. The Court of Appeals affirmed on all grounds in a published opinion. The Court of Appeals affirmed that summary judgment for BHP on the issue of vicarious liability was appropriate because the mine safety statutes do not create non-delegable duties for the employees of independent contractors. The Court affirmed the exclusion of certain of Vanoss' mine safety expert's opinions that related to vicarious liability. The Court affirmed the exclusion of portions of a BHP employee's deposition, as well as the exclusion of certain of her warning statements to BHP as irrelevant because no evidence established she made the statements to BHP personnel before Vanoss' fall. The Court of Appeals affirmed the exclusion of other statements from the employee, as well as "near-miss" incidents for lack of foundation. The Court of Appeals affirmed the trial court's order about a privilege log.

*Jennifer Quintiliani v. Concentric Healthcare et al.*, Arizona Court of Appeals, Div. 1, CA-CV-15-0816. This was Quintiliani's appeal of a 2015 defense verdict in a wrongful termination and Family and Medical

Leave Act case. In a memorandum decision, the Court of Appeals found no reversible error as to the FMLA claim and affirmed the jury's defense verdict on that claim. The Court of Appeals held that material issues of fact existed as to whether Quintiliani was terminated because of her disability, and that the trial court erred in granting summary judgment for Concentric on Quintiliani's claim under the Americans with Disabilities Act. The case was remanded

for further proceedings on the latter.

*Diana Glazer v. State of Arizona*, Arizona Court of Appeals, Division 1, CA-CV 16-0416. This was a road design award for \$7.8 million in 2012. This appealed concerned the interest rate on the judgment. In a published opinion, the Court of Appeals affirmed in part and reversed in part. The Court of Appeals found that the judgment that Arizona paid out of the Risk Management Revolving Fund of \$7 million qualified for a reduced interest rate on the judgment, pursuant to A.R.S. § 41-622(F). The remaining \$800,000, paid by the state's insurance carrier, did not qualify for the reduced rate.

Two of 2016's top 10 verdicts have pending appeals that are in progress.

## Trends

- The top verdicts for 2017 were considerably lower than those for the past three years. The top 10 verdict amounts for 2017 looked most like the ranges in 2011 and 2013.
- The number of verdicts returned to its declining trend. Based on the number of verdicts reported, the number of Arizona cases that are tried all the way to verdict was the lowest number it's been in 14 years. In 2017, there were 39 percent fewer trials than in 2004, when we first started this annual article.
- Punitive damages were given in only four cases in 2017. They remain rare and are generally given by Arizona factfinders only when they are presented with aggravating or extreme facts. We typically see punitive damages awarded in roughly 10 cases per year. Amounts range considerably.
- Medical malpractice is a type of case that has generated a certain number of trials

over the past few years. Over the past five years, when trials have resulted in plaintiff's verdicts those have averaged around \$4 million to \$5 million. Medical malpractice also receives a strong percentage of defense verdicts (such as 79 percent in 2017).

- Predictably year over year, counties with smaller populations and on the outer geographical parts of Arizona lean more conservatively on verdicts. They tend to return more defense verdicts, or plaintiff's verdicts that are relatively lower.
- Over the past 10 years, the average percentage chance of a plaintiff winning at trial in all types of civil cases is 58 percent. The average was at its highest in 2008 and its lowest in 2017.

## Conclusion

This annual article is part of our leadership of and service to the profession, and we are honored to write it. We hope you continue to find it interesting, useful and informative. We invite you to follow Kelly on Twitter @KellyLWilkins where she reports on verdicts and other legal news, and Troy on Twitter @TroyRobertsLaw. If you enjoy this article, Kelly is speaking at the State Bar of Arizona's *Mediation is the New Trial* on May 30, together with Myles Hassett and Robert Oberbillig (live, webcast and simulcast). She'll discuss how to capture your mediation story with verdict and venue data, and insights about Arizona verdict trends.

Please feel free to contact us for more details about Arizona verdicts or to report significant ones that happen in the future.<sup>16</sup>

## endnotes

1. Quote from Rayya Elias.
2. This article makes no comment on the merits of the claims or defenses in these cases, or the parties or 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, attorneys' fees, interest, other fees, or additions or reductions that may have been established later. The parties listed are those who were active when the verdict was rendered. 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.

3. [pacer.gov](https://pacer.gov) for the federal system; [superiorcourt.maricopa.gov](https://superiorcourt.maricopa.gov) for Maricopa County; [agave.cosc.pima.gov](https://agave.cosc.pima.gov) for Pima County; and <https://apps.supremecourt.az.gov/publicaccess/caselookup.aspx> for the other counties.
4. Defendants filed a motion for a new trial.
5. JAI Dining Services filed a motion for judgment as a matter of law or for a new trial, which was denied, and has filed an appeal.
6. Defendants filed a motion for a new trial.
7. Staker & Parson filed a renewed motion for judgment as a matter of law that was denied, and has filed a notice of appeal.
8. 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.
9. 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 includ-
- ed defense verdicts into that analysis, the average of all civil verdicts statewide in 2017 (plaintiff's and defendant's verdicts) would be \$304,135.
10. Patricia Refo, *Opening Statement: The Vanishing Trial*, LITIGATION ONLINE, available at [www.americanbar.org/content/dam/aba/publishing/litigation\\_journal/04winter\\_openingstatement.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publishing/litigation_journal/04winter_openingstatement.authcheckdam.pdf).
11. Other plaintiffs were DBRT Yuma FBO, LLC, DBRT Yuma Hangars, LLC and DBRT Yuma Maintenance LLC. Plaintiffs' motion for a new trial was denied and they filed an appeal.
12. Other defendants were Terry Simpson, Ali Askari and Dat Tran.
13. Brown has filed an appeal.
14. Fitzgerald filed a motion for a new trial that was denied.
15. Murray has filed an appeal.
16. Thank you to Editor Tim Eigo for encouraging this project for its 14 years and for inspiring us all to write more and to write better. Thanks to Art Director Karen Holub for the colorful and creative artwork, and to research librarians Zhanna Helwig, Azucena Herrera and Christine Noble for their research help. We thank all of you for reading, and for your kind and encouraging feedback.