

# Arizona CIVIL

*In 2004, Arizona juries delivered several hefty verdicts, including 19 verdicts over \$1 million. A \$9.389 million verdict against a medical services company over a business dispute was the top recovery in the state in 2004, according to a survey of reported verdicts.*

*Certain areas of the United States are considered to be plaintiff-oriented jurisdictions. In comparison to those areas, how does Arizona stand? And how do Arizona counties compare to each other?*

*No one kind of case dominated the high end of 2004 Arizona verdicts, which were drawn from a variety of case types.<sup>1</sup> They included commercial, insurance bad faith and personal injury cases.*

## Top 10 Largest Arizona Verdicts in 2004

Here's a brief look at the 10 largest recoveries:

### 1. \$9,389,763.39

*Sports Imaging of Arizona, L.L.C. v. OMI-Omni Medical Imaging,*

Maricopa County Superior Court

Plaintiff alleged breach of contract, breach of fiduciary duty and conversion. In collaboration, plaintiff started a medical imaging business that used defendant's infrastructure and provided services for defendant. By written agreement, plaintiff agreed to pay defendant five percent of net collections plus other monthly payments. After services began, defendant denied its obligation to provide billing, collection or administrative services to plaintiff. Defendant was alleged to have converted plaintiff's cash, accounts receivable and equipment. Plaintiff went out of business.

### 2. \$9,388,799.07

*Research Corporation v. Westport Insurance Company, United States District Court, District of Arizona*

Plaintiff alleged breach of contract and first-party insurance bad faith. Plaintiff was sued by another company relating to royalty rights. Plaintiff tendered its defense to its insurer. Defendant insurer initially indicated it would compensate plaintiff's defense costs but failed to do so. Plaintiff had an opportunity to settle the underlying case for \$2 million and demanded defendant do so. Defendant refused and offered nothing in

settlement. Plaintiff's liability was later determined in a declaratory judgment action to be more than \$5 million and its share of defense costs almost \$4 million. Plaintiff was awarded the total of those amounts in damages.

### 3. \$7,500,000

*Sandoval v. State of Arizona Department of Child Protective Services, Wells, and LeVancier, Maricopa County Superior Court*

Plaintiff alleged wrongful death, personal injury, negligence and child abuse against a state agency, its caseworker and a supervisor. The aunt of a 20-month-old baby called a child abuse hotline and reported her concern that the mother's boyfriend was abusing the baby and her 3-year-old sister. The agency employees investigated, determined the charges were unsubstantiated and closed the case. The boyfriend later severely beat the sister, killed the baby and disposed of her body in a canal. Fault was apportioned as follows: 33.4 percent to the agency and its employees, 33.3 percent to the mother, and 33.3 percent to the boyfriend.

### 4. \$6,100,000

*Romero v. Rapid Express, Inc., Pinal County Superior Court*

Plaintiff alleged personal injury and negligence. Plaintiff was working as a farmworker and operating a tractor in the slow lane on Interstate 8. He was rear-ended by defendant's semi-truck driver, who died at the accident scene. Plaintiff fractured his

thoracic vertebrae and was rendered a paraplegic. Plaintiff was found 13 percent at fault, defendant 35 percent at fault and plaintiff's employer 52 percent at fault.

### 5. \$5,000,000

*Dawson v. Withycombe and Turner, Maricopa County Superior Court*

Defendants were on a company's board of directors. Plaintiff alleged they assisted the chief financial officer in fraudulently soliciting a loan from him, which the company could not repay. The jury found that Withycombe conspired with non-parties in doing so. Withycombe and Turner were each found 35 percent at fault on the claim of aiding and abetting fraudulent misrepresentations, and the non-parties were found 30 percent at fault. Withycombe and Turner were each found 40 percent at fault on the fraud claim, and the non-parties were found 20 percent at fault.

### 6. \$4,144,651.80

*Arizona Laborers Pension Trust Fund, Teamsters Pension Trust Fund and Cement Masons Local 395 Pension Trust Fund v. Wells Fargo Bank,*

Maricopa County Superior Court

An agreement was signed to finance The Mercado project by a group of union pension funds, Fife Symington and a construction lender. Symington guaranteed payment of the loans. A bank had separately loaned to another Symington partnership to construct Alta Mesa Village, which Symington also guaranteed. Plaintiffs alleged that the bank gave extensions and declined to fore-

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BY KELLY WILKINS MACHENRY

close on the Alta Mesa project. Plaintiffs alleged that the pension funds were required to fund the loan, and that Symington defaulted on his guaranty. The bank was found to have breached the agreement's covenant of good faith and fair dealing.

## 7. \$3,500,000

*Game Tech International v. Trend Gaming*, United States District Court, District of Arizona

This award was on defendant's counterclaim for wrongful termination of contract. Plaintiff manufactured electronic bingo equipment, which defendant distributed to various charities. Plaintiff alleged defendant was not pricing it at a price that provided a required return, and plaintiff terminated the distribution contract. Defendant refused to make further payments. The jury found for defendant on all of plaintiff's claims. The award to defendant was offset by \$730,000 it withheld after the contract was terminated.

## 8. \$3,166,000

*Van Zee and Willingham v. Genuine Parts Company and Lyke*, Maricopa County Superior Court

Plaintiffs alleged wrongful death. Decedent Van Zee was a 27-year-old man riding a motorcycle on his way to work. Defendant Lyke worked for Genuine Parts Company. Lyke was driving a truck in the scope of his work and turned into Van Zee's path. Van Zee braked, his motorcycle slid down, and he hit the truck. Van Zee died shortly after being airlifted to a hospital. Van Zee was found 15 percent at fault and defendants 85 percent at fault.

## 9. \$3,000,000

*Figueroa v. Salazar*, Pima County Superior Court

Plaintiff alleged wrongful death and alleged defendant's actions were willful and malicious. Figueroa was in his own apartment

complex. He saw a young woman crying and being chased and attempted to help her. He was shot and killed by defendant Salazar. Salazar pled guilty to first-degree murder. The award included \$1 million in punitive damages.

## 10. \$2,650,000

*Miller v. Redwood Fire & Casualty Insurance Company, Phoenix Casualty Investigations, Inc., and Savitsky*, Maricopa County Superior Court

Plaintiff alleged personal injury and negligence. Plaintiff was a crane operator who alleged that defendants agreed to inspect his crane after it was involved in an accident but failed to do so. The crane fractured and failed three and one-half months later. Plaintiff sustained facial fractures and lacerations, and a head injury with memory loss, vision problems and breathing problems. Plaintiff was found 20 percent at fault and defendants 80 percent at fault.

## Averages by Venue

The statewide average verdict<sup>2</sup> in 2004 was \$483,012. Pinal County reported the highest average verdict of \$2,465,515. Pinal County reported zero defense verdicts and three verdicts of more than \$1 million. One of those was the fourth-highest for the year (see *Romero v. Rapid Express, Inc.* above). Even without that particular verdict, however, Pinal County's average was still much higher than the rest of the state. Thus in 2004, Pinal County was the most plaintiff-friendly Arizona venue.

The U.S. District Court for the District of Arizona reported the second-highest average verdict of \$1,306,646. This figure was largely driven by one high verdict (see

*Research Corporation v. Westport Insurance Co.* above). Maricopa County reported the next-highest average verdict, at \$459,167. Next in line was Santa Cruz County at \$305,000, followed by Pima County at \$293,730.

In general, counties in the northern part of the state (including Coconino and Mohave) tended to report the lowest average verdicts, commonly under \$100,000. Yavapai County reported the lowest average verdict in the state of \$11,369. Apache and Navajo Counties each reported only one defense verdict and no plaintiffs' verdicts. No civil verdicts were reported in Graham, Greenlee or La Paz Counties. The remaining counties (Gila, Cochise and Yuma) were in the middle range.

The average by venue is highlighted in the chart on page 18.

## Federal Court Only Slightly Higher in Defense Verdicts

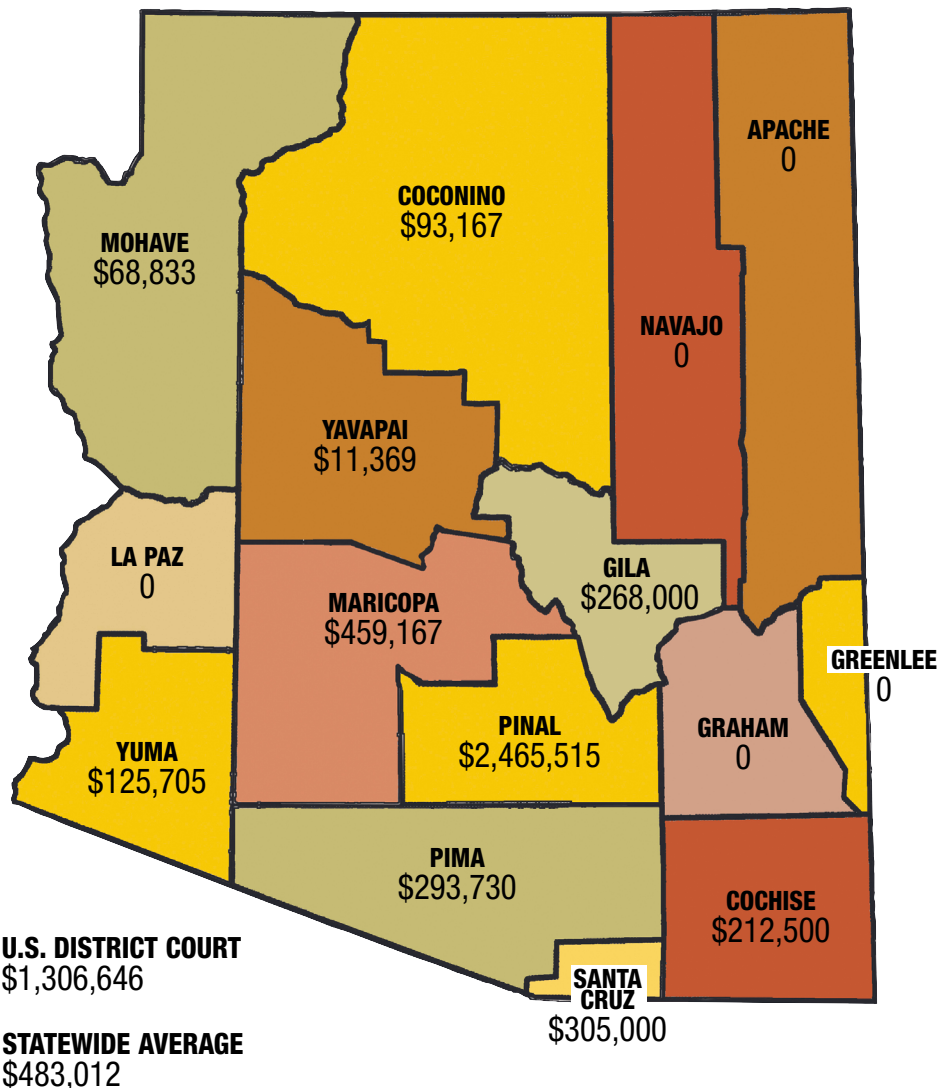
Federal court is generally viewed as a venue more favorable to civil defendants. In the U.S. District Court for the District of Arizona in 2004, defendants prevailed in 47 percent of the reported 2004 verdicts. This figure is slightly higher than the statewide average of 40 percent defense verdicts. It is not, however, markedly higher. Thus, in 2004 defendants did not prevail in Arizona federal court verdicts at a greatly higher rate than in state court.

## Types of Cases With Most Defense Verdicts

Statewide for the year, defense verdicts resulted in 40 percent of the cases. Two types of cases tended to have the most

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## 2004 Reported Arizona Verdict Averages by Venue



defense verdicts. Medical malpractice cases resulted in an overwhelming percentage of defense verdicts in Arizona in 2004. In medical malpractice cases, defense verdicts were reached 93 percent of the time. Two of the cases in which plaintiffs prevailed involved alleged failures to diagnose cancer or leukemia, of which the patients later died.

Civil rights cases against police departments also resulted in more defense verdicts than average. In those cases, defense verdicts were reached 57 percent of the time. Awards tended to be less than \$50,000. The highest single award in this type of case was \$100,000, most of which was in punitive damages.

### Reductions for Comparative and Non-Party Fault

Under Arizona law, the jury may make allocations of fault to parties and named non-

parties. If the jury allocates fault in this way, the amount recoverable is reduced by those percentages. Typically, such allocations are available in personal injury and wrongful death cases. They can have a huge impact on the amount a defendant is required to pay on a judgment.

By way of example, in a motor vehicle accident case, the plaintiff (P) may allege that she was a passenger in a car hit by the car of defendant (D). A non-party, such as the driver of the car (N), also may be named in the suit. A jury could award the plaintiff \$100,000 and allocate fault as follows:

- Plaintiff (P): 10 percent
- Defendant (D): 60 percent
- Non-party (N): 30 percent

The verdict of \$100,000 would be reduced by 10 percent (\$10,000) for plaintiff's own comparative fault and also reduced by 30


percent (\$30,000) for the non-party's fault. Thus the total recoverable by the plaintiff against defendant (D) would be 60 percent, or \$60,000.

Arizona juries made allocations of fault in many personal injury cases in 2004. After accounting for these reductions, verdicts were reduced by 25 percent in personal injury and wrongful death cases. This demonstrates the striking impact these procedures can have on judgments.

## Commercial Verdicts Higher Than Personal Injury Verdicts

On average, Arizona commercial verdicts were notably higher than personal injury verdicts in 2004. The average commercial verdict was \$646,208. Such business or commercial cases included breach of contract, breach of fiduciary duty, fraud, takings and property damage. The average personal injury verdict was significantly lower, at \$346,621. These individual injury cases included bodily injury and wrongful death matters.

## Conclusion

Recent verdict trends can affect choice of venue, trial strategy, case evaluation and settlement. As attorneys, we can better inform our clients with these facts. I hope this analysis has been interesting and informative for practicing lawyers, their practice, and clients. 

## endnotes

1. This article analyzes 307 civil verdicts reported to date from all the Superior Courts of Arizona in 2004. The Superior Court is the only trial court level for which verdicts are formally and routinely reported in Arizona. 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, or criminal cases. The judgments analyzed do not include costs or fees, which may have been awarded 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 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 this analysis.