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Top Ten Civil Verdicts

2014



damages in the five other cases ranged from \$414,000 to \$2,800.

Business Verdicts and Personal Injury Verdicts

The average business plaintiff's verdict was \$1,174,055, with a median of \$210,257. Such cases included breach of contract, breach of fiduciary duty, fraud, insurance bad faith, employment, defamation, professional malpractice, condemnation and property

damage. Of all of the business cases tried in 2014, plaintiffs won 59 percent of them, and defendants won 41 percent.

The average plaintiffs' personal injury verdict was \$820,879. The median was \$41,000. The cases in this category had one or more persons who were 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 68 percent of all the cases tried to verdict in 2014. Of all of the personal injury cases tried in 2014, plaintiffs won 52 percent of them, and defendants won 48 percent.

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 2014's significant Arizona defense verdicts:

A *Steak Out Restaurant & Saloon LLC et al. v. Old Lobos T&T LLC et al., Pima County Superior Court, C2013-4862*¹⁵

This trial ended in a defense verdict on the main claims, plus a win for the defense of more than \$2.5 million on their counterclaims. Steak Out Restaurant and its owners the Wystrach family filed suit against Old Lobos T&T and its owners the Ault family, alleging that they breached their lease, made misrepresentations and were guilty of fraud. The Aults and Old Lobos counterclaimed that plaintiffs breached the lease agreement and breached personal guarantees. Steak Out Restaurant asked the jury to award \$2.2 million. Old Lobos sought \$1.56 million on its counterclaim. The jury found in favor of defendants on Steak Out's claims, and on the counterclaims awarded defendants \$1,536,670.06 for Steak Out's breach of the lease and \$1,012,893.05 for the Wystrachs' breach of personal guarantees.

B *Veronica Monge v. Sun Valley Masonry, Inc. and Felipe Duarte, Maricopa County Superior Court, CV2010-081037*¹⁶

This was a construction site wrongful-death case against a forklift driver, Felipe Duarte, and his employer, Sun Valley Masonry. Samuel Monge, a laborer, was struck by the forklift and died on the site. The Monge family alleged that Duarte failed to stop at the corner, did not sound the horn before turning, had physical impairments, and had driven by Monge several times before at a high speed. They asked the jury to award his spouse and five children a total of more than \$14 million. Sun Masonry and Duarte argued that Monge and his employer caused the accident, and that Monge assumed the risk when he worked unprotected in an intersection instead of waiting for a flagger or barricades to be set by his employer. They also defended that Duarte had been trained and certified as a forklift driver.

2014 significant Defense Verdicts

C *Asuquo Akpan and Joyce Akpan v. University Medical Center Corp. et al., Pima County Superior Court, C2012-6656*¹⁷

This was a medical malpractice wrongful-death case. Andikan

Akpan, a 21-year-old university student, went to University Medical Center's emergency department because of extreme pain due to his sickle-cell disease. University Medical Center and its staff gave him opiates for the pain. His parents alleged Akpan was vulnerable to opiates' side effects and was over-medicated, and that his cardiac arrest and death were due to improper monitoring of his clinical status. The Akpans asked the jury for more than \$13 million. University Medical Center denied that Akpan's clinical progression was consistent with over-medication and defended that his cardiac arrest was brought on by complications due to obstruction of healthy red blood cells in his system.

D *Elena Noguero v. American Family Mutual Ins. Co., Maricopa County Superior Court, CV2011-080366*¹⁸

This was an insurance bad-faith case. Elena Noguero claimed that her roof was damaged by two storms that caused leaks in the roof of the building that housed her business. She alleged that her insurance carrier, American Family Mutual Insurance Company, failed to pay for repairs to the roof and interior water damage. Noguero asked the jury to award approximately \$1.4 million for property damage, lost business inventory, lost profits and business good will, plus damages for emotional trauma, anxiety and humiliation, in addition to \$6 million in punitive damages. American Family denied that the roof was damaged during the storms or that it was the cause of water intrusion. American Family defended that it paid a reasonable amount to repair other kinds of damage caused by those storms.

E *Mark Franklin v. Jason Clemett et al., Maricopa County Superior Court, CV2010-033437*¹⁹

Mark Franklin, 35, went to a Phoenix Coyotes hockey game. After an exchange of words with Franklin, a fight broke out and Jason

Clemett and Daniel Blanchard struck him on the head three times before security restrained him. Franklin contended that Clemett and Blanchard acted with reckless indifference to his safety and created an unreasonable risk of harm to him. Franklin alleged he suffered a fractured skull and nasal spine, permanent brain damage, concussion, joint dysfunction, permanent hearing loss, tinnitus, vertigo, deviated septum, chronic sinusitis, and erectile dysfunction. Franklin asked the jury to award \$3.14 million. Clemett and Blanchard defended that Franklin was the aggressor, that Franklin harassed them throughout the game and became increasingly vulgar and obscene, and that they acted in self-defense. They also argued that Franklin was intoxicated, invited them to fight, spit on Clemett's wife, and threatened to kick and kill them. Clemett and Blanchard also claimed that the hockey arena failed to enforce the NHL's fan code and failed to eject Franklin from the game. Clement and Blanchard disputed the extent of Franklin's injuries, denied he had a brain injury, and showed surveillance video to the jury.

F *Crystal Rezzonico v. Indiana Mills & Manufacturing, Inc., Maricopa County Superior Court, CV2010-023451*

In this product liability case, Crystal Rezzonico was a Phoenix fire department captain responding to a fire call when a Chevrolet Monte Carlo collided into the side of her fire truck. The collision caused the fire truck door to open, and she was ejected. Rezzonico sustained a traumatic brain injury with permanent cognitive deficits and a partial seizure disorder. She claimed she was wearing her seatbelt but that the seatbelt's design permitted her seatbelt's button to become contaminated, resulting in a partial or false latching of the buckle. She sought \$2.2 million in medical expenses and future earnings in addition to pain and suffering damages. Seatbelt manufacturer Indiana Mills & Manufacturing denied that Rezzonico was wearing her seatbelt, and demonstrated by a CT scan that no contaminants were visible in the seatbelt buckle. It also argued the buckle was designed so that the button did not touch the metal latchplate that slots into the buckle.

G *Michelle Guarrera v. Bruce Sawyer et al., Maricopa County Superior Court, CV2010-080615*²⁰

Michelle Guarrera purchased a home owned by Bruce Sawyer and Jean Berg in January 2009. Before buying it, she noticed a smell in the home, but a Keller Williams real estate agent told her the smell was due to recently completed drywall and tile work. After living in the home for 18 months, the smell never went away and Guarrera moved out of the home. She alleged the smell was due to pet urine and feces from the prior owners' pets. Prior owners Sawyer and Berg had multiple dogs, 40 or more cats, several rabbits, four tortoises, and 20 birds. Guarrera brought claims for non-disclosure, fraudulent misrepresentation, and negligent misrepresentation, and sought \$306,531.62 in compensatory damages and \$612,000 in punitive damages. The prior owners argued that prior to closing the home was cured of defects and that any pet odors would have dissipated. They also claimed that the smell was created by Guarrera's two dogs that she left indoors when she went to work for the day.

Where Are They Now?

Here are significant appellate opinions from 2014 about past years' notable verdicts:

Desert Palm Surgical Group, PLC et al. v. Petta, Arizona Court of Appeals, Division One, CA-CV 13-0376. This was a \$12 million defamation verdict in 2011. In a published opinion, the Court of Appeals vacated the judgment and remanded for a new trial. The Court of Appeals agreed with Petta that on the record presented, the \$11 million in compensatory damages awarded was excessive and unsupported by the evidence. It found that plaintiffs' testimony about special damages was unsupported by documentation, and that the evidence did not support such an excessive award of general damages.

Diana Glazer et al. v. State of Arizona Department of Transportation, Arizona Court of Appeals, Division One, CA-CV 12-0572. This was a road design award for \$7.8 million in 2012. In a published opinion, the Court of Appeals affirmed the verdict for plaintiffs. It held that the trial court did not err in denying a motion to exclude testimony from plaintiff's transportation engineer expert, in failing to grant the state immunity as a matter of law, or in failing to grant a new trial when the jury allocated all fault to the state.

Wes Davis v. BNSF Railway Company, Arizona Court of Appeals, Division One, CA-CV 13-0083. This was a Fair Labor Standards Act award for \$3 million in 2012, but the jury allocated 95 percent fault to Davis. Davis filed this appeal, arguing that the trial court should not have instructed the jury on comparative fault because there was no supporting evidence, and that the trial court erred in denying Davis' motion to amend the judgment because the evidence did not support that he was 95 percent at fault. The Court of Appeals affirmed the judgment.

Two other defense verdicts from 2012 were affirmed in non-published memorandum opinions.²¹ Four of the top 10 2013 verdicts have pending appeals that are in progress. Two of 2013's significant defense verdicts have pending appeals.

Trends

- The number of verdicts continues to decline. The number of Arizona cases that are tried all the way to verdict has been steadily declining since 2009. Each year since then, the number of trials has dropped. In Arizona, about 25 percent fewer trials go to verdict than did a decade ago.
- Medical malpractice verdicts for plaintiffs have become more common in Arizona. We commented about such a spike two years ago, and the trend continues.
- When we review appeals of the largest verdicts over the past decade, approximately 61 percent of the plaintiffs' verdicts were appealed. On appeals of the significant defense verdicts in the same time, 38 percent were appealed.²²
- As compared to Maricopa County, counties with fewer residents and on the outer geographical parts of Arizona lean more