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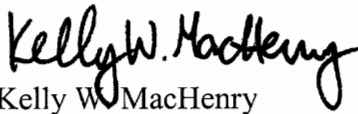
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Stacy Gabriel  
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Dear Stacy:

You were one of the winning attorneys in one of the featured Arizona civil verdicts in my recent article in *Arizona Attorney*. Congratulations, and I thought you might enjoy an extra copy. Please feel free to share it with anyone else. I hope all is well with you, and wish you a great summer.

Best regards,



Kelly W MacHenry

KWM:mb1  
Enclosure

# Arizona Civil Verdicts 2006

erate large awards. Eleven medical malpractice cases in that time period had verdicts of \$1 million or more, including four that were \$5 million or more. Thus although it appears that liability may be a difficult hurdle for our juries in these cases, once established, they will award sizeable damages.

## Commercial Verdict Average and Median Higher Than Personal Injury

In 2006, Arizona commercial verdicts were again higher than personal injury verdicts in their averages and medians. The average commercial verdict was \$1,181,411, with a median of \$190,000. Such business or commercial cases included breach of contract, breach of fiduciary duty, fraud, takings and property damage.

The average personal injury verdict was \$574,584, and its median was \$31,311. These individual injury cases included bodily injury and wrongful death matters. In terms of volume, there were more than twice as many bodily injury verdicts as there were commercial verdicts.

## Significant Defense Verdicts

The defense verdicts highlighted here are those in which the claimed damages were high, and this analysis focuses on the case in each category with the largest claimed damages. Here are a few of the year's significant Arizona defense verdicts:

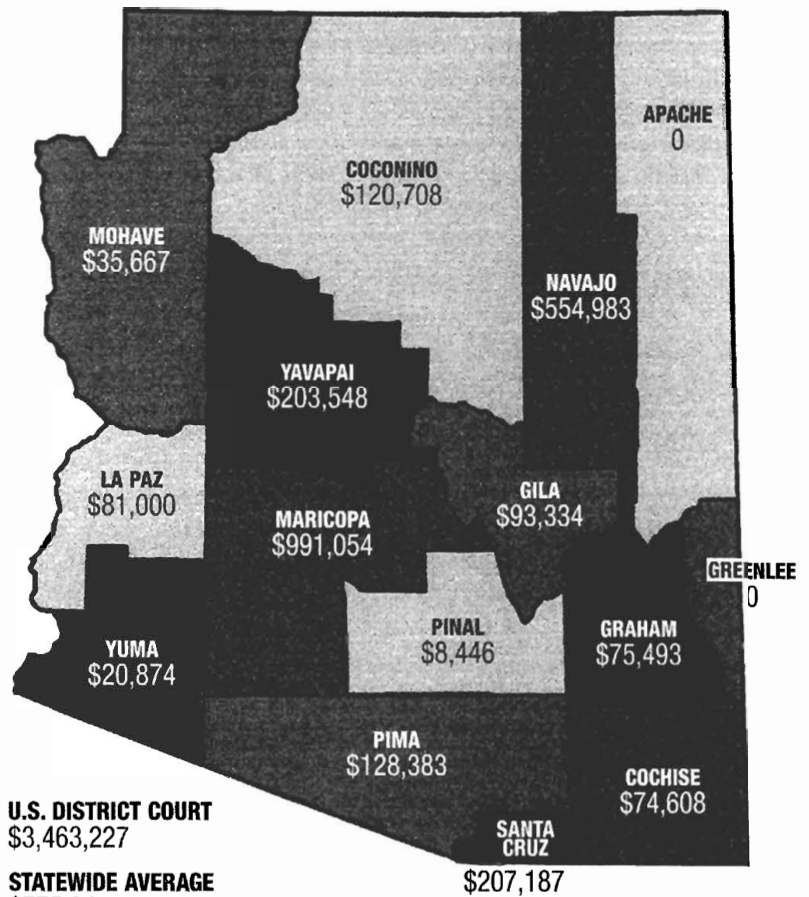
### **A** *Victor Dement, Barbara Edwards, and Karen Evans v. State of Arizona*, Gila County Superior Court

Victor Dement was a passenger in a vehicle that was involved in a violent crash. He was paralyzed as a result of the collision. By his own admission, he was not wearing a seat belt. He alleged that the State of Arizona failed to extend a culvert headwall as required by law. He asked the jury to award \$15 million. Arizona maintained that the driver of the vehicle he was in was at fault.

### **B** *Jeff Brethauer v. General Motors Corporation*, Maricopa County Superior Court

In this product liability case, Jeff Brethauer was driving a 1998 Chevrolet pickup truck on I-17 in a heavy rainstorm. The truck hydroplaned, ran off the highway and hit a steep embankment. Brethauer was ejected and sustained paralyzing injuries. He alleged that he was wearing his seat belt but that it "inertially released" in the collision, and he also alleged that the side window's tempered glass allowed him to be ejected. He asked the jury to award \$12 million. GM demonstrated that he was not wearing the seat belt, and that the alternative laminated glass design was

## 2006 Reported Arizona Verdict Averages By Venue



not safer and would not have prevented his ejection.

### **C** *Carina Henry, Mark Henry, and Jane Klugman v. Robert Takacs*, Maricopa County Superior Court

In this medical malpractice case, Carina Henry alleged that Robert Takacs, a radiologist, failed to diagnose her condition of volvulus, in which the bowel becomes twisted and causes obstruction. Plaintiffs alleged that as a result surgery was delayed, which caused septic shock, bowel death, acute respiratory distress syndrome, a stroke and residual brain damage. Plaintiffs asked the jury to award \$10 million. Takacs argued that the signs of volvulus are extremely rare and subtle, and that the condition was not conspicuous on the CT scan.

### **D** *Kelley Rollings, Donald Rollings, and Bacon Industries, Inc. v. City of Tucson*, Pima County Superior Court

Plaintiff landowners alleged water has leaked for several years, and continues to do so, from Tucson's water mains in a historic downtown neighborhood. Plaintiffs asked for \$5.7 million for damage to their properties and block walls. Defendants argued that its water mains were not leaking and that the cause of the damage was landscaping and a certain type of plastering on the walls.

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**E** *Nichola Tavilla Donna Tavilla, Katherine Tavilla, Britney Tavilla, and Alyssa Tavilla v. Employers Mutual Casualty Insurance Company*, Maricopa County Superior Court

This was a bad faith action in which the Tavilla family's kitchen sink pipe fractured, causing water damage to their home. They alleged that Employers Mutual's adjuster refused to assist them and that the delay led to mold in their home. Plaintiffs asked the jury to award \$3.2 million, most of it in punitive damages. Employers Mutual paid most of their claim and defended that no significant mold was found.

**F** *Frank Hadley, Sr., Frank Hadley, Jr., Teresa Arias, and Dora Romero v. Bar U7 Farms Inc. and City of Mesa*, Maricopa County Superior Court

Plaintiffs were motorists traveling by Bar U7 Farms when blowing dust reduced their visibility and caused multiple collisions. They sustained various injuries including a shattered knee, fractured tibia/fibula, closed head injury, and fractured ribs. They alleged that Bar U7 Farms negligent tilled and leveled the field without watering it or taking precautions to keep loose soil from blowing onto the highway. Plaintiffs collectively asked for \$3.1 million. Defendants claimed that they were unable to water the field and that watering it would not have prevented dust.

**G** *Franklin Adakai v. Salt River Project Agricultural Improvement and Power District*, United States District Court

Franklin Adakai alleged that SRP disciplined and discriminated against him because he is a Navajo and then terminated his employment in retaliation for his complaints about the alleged discrimination. He had an EEOC determination in his favor. He alleged that he developed emotional trauma and a major depressive disorder. He asked for compensatory and punitive damages plus \$1 million in lost wages. SRP claimed that he had poor work performance, caused disharmony and disruption in the workplace, and was insubordinate.

**H** *Brooke Baker v. New Wave Entertainment, L.L.C. dba The Sanctuary, and Celerino Lomas*, Maricopa County Superior Court


Brooke Baker, a nightclub hostess, alleged that her co-worker Celerino Lomas placed a "date rape" drug in her drink and then sexually assaulted her. She also alleged that Lomas, as New Wave's agent, served her alcohol even though she was not 21. She alleged emotional trauma and aggravation of PTSD, bipolar and generalized anxiety disorders. She asked the jury to award an unspecified amount in compensatory and punitive damages. New Wave defended that Baker and Lomas were not acting as employees when they drank alcohol after hours and had sex. Lomas denied giving Baker a "date rape" drug and argued that the sex was consensual. The jury found that no date rape occurred, finding for both Lomas and New Wave.

### Conclusion

Just for fun, a little trivia about Arizona verdicts over the past three years:

- The month for the most plaintiff's verdicts: **April**
- The month for the most defense verdicts: **February**
- The day of the week on which the most verdicts were rendered: I know all my fellow trial lawyers would bet on Friday, but it was actually **Thursday**. Maybe we like early weekends in this lovely state.

This is the third year for this annual article. I intend to keep writing it as long as you enjoy reading it. I hope and believe that it's not only interesting to look back at what happened, but that it also helps us to give a more educated analysis of Arizona venues and trends.

Thank you for sending your positive feedback. I'm also grateful to Snell & Wilmer L.L.P. for its support and encouragement. Please feel free to contact me any time for more details about the verdicts. See you next year. 

### endnotes

1. This article analyzes 368 civil verdicts reported to date from the Superior Courts of Arizona and the United States District Court for the District of Arizona in 2006. 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 that may have been established later. The parties named are the ones involved in the case when it went to verdict. This article makes no comment on the merits of the claims or defenses, or the lawyering abilities of those involved, in these cases.
2. Other named defendants were the jailers Michael Wilkins (no relation to the author), Kristine Kemper, Amanda Garrison, Laura Sodeman, Leah Compton, Katherina Brokschmidt, Eric Nulph, Baruch Reusch and Susan Fisher.
3. Other named plaintiffs were 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.
4. Other named defendants who held property interests were RCH Investment Co. LLC, Selwyn Jacobson, Janke Jacobson, Camelback Community Bank, Honeywell International, Inc., State of Arizona Department of Revenue, Maricopa County Treasurer and Maricopa County.
5. Average verdicts and median verdicts are computed from all plaintiffs' verdicts in the particular venue. Defense verdicts and reductions for comparative negligence or nonparty fault are deliberately not factored into the analyses of averages and medians.