

ARIZONA

1. What are the legal considerations in your State governing the admissibility or preventability in utilizing the self-critical analysis privilege and how successful have those efforts been?

Arizona does not yet recognize the self-critical analysis privilege. The closest rule that it has to the self-critical analysis privilege is Ariz. R. Evid. 407 regarding the general prohibition on the introduction of subsequent remedial measures. The rule closely mirrors its federal counterpart and states:

When measures are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove: negligence; culpable conduct; a defect in a product or its design; or a need for a warning or instruction.

But the court may admit this evidence for another purpose, such as impeachment or--if disputed--proving ownership, control, or the feasibility of precautionary measures.

Ariz. R. Evid. 407

Further to the point, Rule 407 requires the exclusion of evidence of subsequent measures to prove a party's negligence or culpable conduct, even when such measures are taken without specific knowledge of the accident in question. *Johnson v. State, Dep't of Transp.*, 224 Ariz. 554, 558, 233 P.3d 1133, 1137 (2010).

2. Does your State permit discovery of 3rd Party Litigation Funding files and, if so, what are the rules and regulations governing 3rd Party Litigation Funding?

Arizona has not yet addressed the discoverability of 3rd Party Litigation Funding.

3. Who travels in your State with respect to a Rule 30(b)(6) witness deposition; the witness or the attorney and why?

Arizona has not specifically addressed the issue in the context of a Rule 30(b)(6) deposition. However in an aside and without addressing the issue, Arizona has acknowledged that other courts require corporate employees or officers to appear in the trial jurisdiction for their depositions. *Rogers v. Fenton*, 115 Ariz. 217, 218, 564 P.2d 906, 907 (Ct. App. 1977).

With the prevalence of Zoom and other video conferencing software, the issue may be largely irrelevant.

4. What are the benefits or detriments in your State by admitting a driver was in the "course and scope" of employment for direct negligence claims?

Under Arizona law, whether an employee's tort is within the course and scope of employment is generally a question of fact, and only becomes a question of law if the undisputed facts indicate that the conduct was clearly outside the scope of employment. *McCloud v. Ariz. Dep't of Pub. Safety*, 217 Ariz. 82, 91, 170 P.3d 691,

700 (App.2007). Arizona courts examine several factors when determining whether an employee's conduct falls within the course and scope of the employee's employment. They are: whether the conduct is the kind the employee is employed to perform or that the employer had the right to control at the time of the employee's conduct; whether the conduct occurs within the authorized time and space limits; and whether the conduct furthers the employer's business, even if the employer has expressly forbidden it. *Higginbotham v. AN Motors of Scottsdale*, 228 Ariz. 550, 552, 269 P.3d 726, 728 (Ct. App. 2012).

The analysis is highly dependent upon the facts of each case, and even matters such as taking a break for refreshments, or terminating an employee while in the act of assaulting an employee can be determined to be within the employee's course and scope of employment. *Cox v. Enloe*, 50 Ariz. 201, 205-07, 70 P.2d 331, 332-33 (1937); *Higgins v. Assmann Electronics, Inc.*, 217 Ariz. 289, 298, 173 P.3d 453, 462 (Ct. App. 2007). Of course, the employer is not liable for actions outside the employee's course and scope of employment, which is beneficial to the employer. But, prior to casting the employee aside and contending that his or her actions were outside of the course and scope, a detailed analysis of the facts in conjunction with an analysis of Arizona law concerning those actions that are considered within the course and scope must be undertaken.

5. Please describe any noteworthy nuclear verdicts in your State?

Paul Troupe, an adult male, sustained fatal head and neck injuries as a result of an automobile collision in which his vehicle was struck from the rear by a fully loaded tractor trailer operated by defendant Brian Knoll in the course of his employment with defendants Pavestone, L.L.C. and The Quikrete Companies, Inc. The collision caused Troupe's vehicle to be pushed into other vehicles, travel across all of the lanes of travel, strike the concrete median barrier and then catch fire. Mr. Troupe's estate contended that defendant Knoll fell asleep prior to the incident, tested positive for narcotic drugs following the collision and had taken the prescription medication Soma prior to driving. It also claimed that defendants Pavestone, L.L.C. and The Quikrete Companies, Inc. were aware that Knoll was not fit to drive due to his use of prescription medication since 2011, his prior work violations and multiple traffic violations. Mr. Troupe's estate sought compensatory and punitive damages. The defendants claimed Mr. Knoll took a single Soma pill 14 hours prior to the incident and was not impaired at that time. Defendants Pavestone, L.L.C. and The Quikrete Companies, Inc. denied being aware that Mr. Knoll was taking Soma and claimed that he never informed them that he had any issues with fatigue or sleepiness. The jury returned an award in the estate's favor of **\$5,000,000**.

Bruno v. Landstar Sys.

Maricopa County Superior Court CV2013-094384 (2015)

Michael Bruno, 54, was reportedly operating a 2003 Chevrolet Silverado on US Highway 93, with his spouse Kathy Bruno as a front seat passenger and Renee Bruno and Desiree Sierra as back seat passengers, when the right front Michelin LTX M/S tire, sold by Discount Tire Co., suffered a tread/belt separation. Mr. Bruno lost control of the vehicle and collided with the rear of a parked tractor trailer that was registered to Landstar Capitol Corporation and operated by Landstar System Inc. The trailer was designed and manufactured by Hyundai Translead. Mr. Bruno suffered fatal injuries as a result of the collision and the passengers sustained personal injuries. Kathy Bruno, Individually, as surviving spouse of Michael Bruno, and as Personal Representative of the Estate of Michael Bruno, Renee Bruno, Individually and as surviving daughter of Michael Bruno, Anne Bruno, as surviving daughter of Michael Bruno, and Nina Bruno, as surviving mother of Michael Bruno, and Sierra filed a lawsuit against Landstar System Inc., Michelin North America Inc., Discount Tire Co. Inc., Hyundai Translead Inc. The plaintiffs alleged the tire and the trailer were defective in their design and manufacture. They contended the trailer was equipped with an inadequate and substandard rear-protection guard.

The plaintiffs also contended the operator of the tractor trailer was negligent in failing to park as far from the roadway as possible and failed to provide any recovery zone for the vehicle. They sought compensation for their personal injuries, medical expenses, lost income, pain, discomfort, suffering, disability, disfigurement, anxiety, loss of enjoyment of life and witnessing Mr. Bruno's death. A jury determined Landstar was solely at fault. The plaintiffs were awarded a total of **\$19.25 million in damages**.

6. What are the current legal considerations in terms of obtaining discovery of the amounts actually billed or paid?

Arizona has broad discovery rules and allows discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable. Ariz. R. Civ. P. 26. Considering this, the difference between what a plaintiff was billed versus what was paid for his or her medical treatment is likely discoverable. However, as discussed below, the difference between the two, if any, is likely not admissible.

7. How successful have efforts been to obtain the amounts actually charged and accepted by a healthcare provider for certain procedures outside of a personal injury? (e.g. insurance contracts with major providers)

Arizona law holds that a Plaintiff is entitled to recover the full amount of his or her reasonable medical expenses for which he or she was charged, without any reduction for the amounts apparently written off by her healthcare providers pursuant to contractually agreed-upon rates with her medical insurance carriers. *Lopez v. Safeway Stores, Inc.*, 212 Ariz. 198, 207, 129 P.3d 487, 496 (Ct. App. 2006).

8. What legal considerations does your State have in determining which jurisdiction applies when an employee is injured in your State?

Under Arizona law, if a worker who has been hired or is regularly employed in Arizona receives a personal injury by an accident arising out of and in the course of the worker's employment, the worker is entitled to compensation according to the laws of Arizona, even if the injury was received outside this state. If a worker who is employed in Arizona and is subject to Arizona's workers' compensation law temporarily leaves Arizona incidental to that employment and receives an injury arising out of and in the course of employment, the worker, or beneficiaries of the worker if the injury results in death, is entitled to the benefits under Arizona's workers' compensation scheme as though the worker were injured in Arizona. Ariz. Rev. Stat. Ann. § 23-904

Additionally, Arizona's court of appeals has held that when compensation has been paid, the law of the state of compensation should govern in third-party actions including the nature and extent of lien subrogation, and assignment rights. *Jackson v. Eagle KMC L.L.C.*, 245 Ariz. 544, 546, 431 P.3d 1197, 1199 (2019).

9. What is your State's current position and standard in regards to taking pre-suit depositions?

With regards to pre-suit depositions, if the court is satisfied that perpetuating the testimony or preserving other evidence may prevent a failure or delay of justice, the court must enter an order that: (i) identifies each person who may be served with a subpoena under Rule 45 to obtain testimony or for the inspection of documents or premises and specifies the subject matter of the permitted examination; (ii) permits the physical or mental examination of an expected adverse party or of a person in the custody or under the legal control of an expected adverse party; or (iii) permits the deposition of the petitioning party. If a court authorizes a deposition, but an expected adverse party is not served in the same manner that a summons and pleading are served, and is otherwise unrepresented by counsel, the court must appoint an attorney to represent that expected adverse party and to cross-examine the deponent. The petitioner must pay for an appointed attorney's services in an amount fixed by the court. Ariz. R. Civ. P. 27

10. Does your State have any legal considerations regarding how long a vehicle/tractor-trailer must be held prior to release?

After an accident, depending upon where it occurs, a tractor/trailer must be held until it can be subjected to an inspection by the appropriate governmental entity charged with such inspections. Those possible entities include the Arizona Department of Public Safety / Arizona Department of Transportation, and local city law enforcement departments. Such inspections usually are conducted within 24 hours of the accident.

11. What is your state's current standard to prove punitive or exemplary damages and is there any cap on same?

Punitive damages are restricted to those cases in which the defendant's wrongful conduct was guided by evil motives. To obtain punitive damages, a plaintiff must prove that defendant's "evil hand" was guided by an "evil mind." The "evil mind" which will justify the imposition of punitive damages may be manifested in either of two ways: It may be found where the defendant intended to injure the plaintiff. It may also be found where, although not intending to cause injury, the defendant consciously pursued a course of conduct knowing that it created a substantial risk of significant harm to others. Punitive damages are awarded upon proof from which the jury may find that the defendant was aware of and consciously disregarded a substantial and unjustifiable risk that significant harm would occur. *Rawlings v. Apodaca*, 151 Ariz. 149, 162, 726 P.2d 565, 578 (1986).

Arizona recognizes that although the Supreme Court has consistently rejected the concept of using a mathematical formula to crystallize the relationship between compensatory and punitive damages, it has held that while single-digit multipliers are more likely to comport with due process, a factor more than four comes "close to the line" of constitutional impropriety. *Hudgins v. Sw. Airlines, Co.*, 221 Ariz. 472, 491, 212 P.3d 810, 829 (Ct. App. 2009). Therefore, although Arizona courts have not imposed a bright-line ratio between compensatory and punitive damages, they generally note that an award of more than four times the amount of compensatory damages might be close to the line of constitutional impropriety. *Nardelli v. Metro. Grp. Prop. & Cas. Ins. Co.*, 230 Ariz. 592, 611, 277 P.3d 789, 808 (Ct. App. 2012).

12. Has your state mandated Zoom trials? If so, what have the results been and have there been any appeals.

The Arizona Supreme Court has delegated jury trial procedures during the COVID-19 pandemic to each individual county.

Apache County

It does not appear that there are any restrictions on civil jury trial as of the time of this writing. For additional information, please consult: <https://www.apachecountyaz.gov/Superior-Court>

Cochise County

It does not appear that there are any restrictions on civil jury trial as of the time of this writing. For additional information, please consult: <https://www.cochise.az.gov/clerk-superior-court/home>

Coconino County

It does not appear that there are any restrictions on civil jury trial as of the time of this writing. For additional information, please consult: <https://www.coconino.az.gov/2316/COVID-19-Response>

Gila County

It does not appear that there are any restrictions on civil jury trial as of the time of this writing. For additional information, please consult: <https://www.gilacountyaz.gov/government/courts/index.php>

Graham County

It does not appear that there are any restrictions on civil jury trial as of the time of this writing. For additional information, please consult: <https://www.graham.az.gov/514/Superior-Court>

Greenlee County

It does not appear that there are any restrictions on civil jury trial as of the time of this writing. For additional information, please consult: <https://greenlee.az.gov/elected-officials/courts/superior-court-home>

La Paz County

It does not appear that there are any restrictions on civil jury trial as of the time of this writing. For additional information, please consult: <https://www.lapazsuperiorcourtclerk.com/index.html>

Maricopa County

Pursuant to Administrative Order No. 2021-013, empanelment of juries for civil trials in Maricopa County Superior Court, the most populous county in Arizona has been suspended through March 31st 2021. Updates regarding subsequent orders can be found at the following website: <https://www.superiorcourt.maricopa.gov/SuperiorCourt/AdministrativeOrders/Index.aspx>

Mohave County

It does not appear that there are any restrictions on civil jury trial as of the time of this writing. For additional information, please consult: <https://mohavecourts.com/>

Navajo County

It does not appear that there are any restrictions on civil jury trial as of the time of this writing. For additional information, please consult: <https://navajocountyaz.gov/Departments/Superior-Court>

Pima County

Civil jury trials are suspended through March 31st 2021. Updates regarding subsequent orders can be found at the following website: <https://www.sc.pima.gov/covid-19>

Pinal County

It does not appear that there are any restrictions on civil jury trial as of the time of this writing. For additional information, please consult: <https://www.pinalcountyaz.gov/Judicial/Pages/COVID-19Info.aspx>

Santa Cruz County

It does not appear that there are any restrictions on civil jury trial as of the time of this writing. For additional information, please consult: <https://santacruzcountyaz.gov/130/Superior-Court>

Yavapai County

It does not appear that there are any restrictions on civil jury trial as of the time of this writing. For additional information, please consult: <https://courts.yavapai.us/clerk>

Yuma County

It does not appear that there are any restrictions on civil jury trial as of the time of this writing. For additional information, please consult: <https://www.yumacountyaz.gov/government/courts/clerk-of-superior-court/jury-duty>

13. Has your state had any noteworthy verdicts premised on punitive damages? If so, what kind of evidence has been used to establish the need for punitive damages? Finally, are any such verdicts currently up on appeal?

Beecher v. Biological Resource Ctr.,

Maricopa County Superior Court CV2015-013391 (2019)

Plaintiff and other families, had family members that donated their bodies after death to a “Willed Body Donor Program” run by Biological Resource Center (BRC), which claimed the decedents’ bodies would be used for important medical research topics. Cremated remains of the donors were to be returned to family members within three weeks of the donation. Contrary to its representations, BRC had the bodies dismembered, and the bodies and body parts were shipped by Platinum Medical Inc. and Platinum Training LLC (Platinum) to be sold for profit to third parties and used for medical and non-medical purposes never approved or consented to by the donors and their families. BRC allegedly operated a facility where dismembered body parts were unidentifiable and placed in freezers that were filled to capacity. FBI investigators were required to wear Hazmat suits when gathering evidence due to the presence of bodies and bodily fluids throughout the facility. BRC reportedly presented the families with cremains that were falsely represented to be their family members. Plaintiff, along with other families, filed a lawsuit against BRC, its shareholders, Stephen Gore and his spouse Sally Gore, Platinum, and its members, Charles Oddo and his spouse Amy Oddo. The plaintiffs alleged the defendants acted in a joint partnership, made false promises or misrepresentations to donors and their families, and acted recklessly in the obtaining, cutting up, storage, use, sale and distribution of the donor bodies. They sought compensatory damages for their physical, financial, emotional and psychological damage. The plaintiffs also sought punitive damages. The defendants denied the allegations. They contended that the donation consent forms specifically provided that donated bodies would be dissected and disarticulated in order to maximize the use of the bodies for educational and scientific purposes.

A jury returned a verdict awarding ten of the plaintiffs damages in the total amount of \$58.5 million from Stephen Gore.

Dupray v. JAI Dining Services, Inc, et al.

Maricopa County Superior Court CV2014-007697 (2017)

Plaintiff claimed he suffered a C2 fracture, ligamentous compromise at C1-C3, mid-shaft right humeral fracture with obvious deformity, left frontal traumatic subarachnoid fracture, a scalp laceration and multiple scrapes, bruises and contusions as a result of a motor vehicle collision in which defendant Pedro Panameno collided with his motor scooter as he was stopped at a red light after consuming alcoholic beverages at a strip club owned and operated by defendant JAI Dining Services Inc. The Plaintiff was allegedly dragged for several feet by Panameno's vehicle and the scooter was pushed forward approximately 225 feet. The Plaintiff contended that Panameno operated his vehicle with an alcohol concentration of 0.204, was weaving in and out of traffic and was driving at an excessive speed. The Plaintiff further contended JAI was liable for selling alcohol to Panameno when he was disorderly or obviously intoxicated. Defendant JAI contended that Panameno was a passenger in a vehicle when he left their premises and began driving approximately 15 minutes after arriving at the driver's home and then drove to his girlfriend's house and left following an argument. A jury determined JAI was 40% at fault and Panameno was 60% at fault. The Plaintiff was awarded \$400,000 in punitive damages from Panameno and \$4,000,000 in punitive damages from defendant JAI.