The Arizona Association of Defense Counsel

Common Defense

Fall 2017

A Magazine for Arizona Defense Attorneys

22nd Annual Barry Fish Memorial Golf Tournament

The tournament has raised more than $200,000 over the past 22 years

Page 15

2017 YLD Softball Tournament

On March 25, 2017, the YLD held its annual charity softball tournament benefiting the Valley's youth.

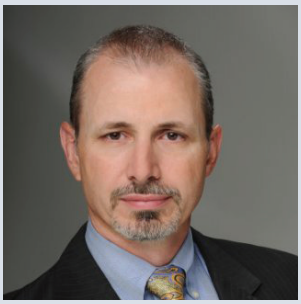
Page 14

Distinguished Service Award Honorees

Interviews with Doug Christian and Pat McGroder

Page 19-22

President's Message



Charles Callahan, Esq.

Yes, you read that correctly – I am your AADC President for the coming year. I imagine some of you are asking, "How did this happen?" In light of recent election results, though, it shouldn't be all that surprising. To assuage some concerns, I can assure you that I am *not* an avid Twitter user…

In all seriousness, I am honored to have the opportunity to serve Arizona's defense bar as AADC's President. We have seen tremendous changes in the way we practice law, not only through advances in technology, but also through changing attitudes with respect to balancing our personal and professional lives. These changes in the way we practice law also seem to have affected how, and how often, we interact with our colleagues. As you have no doubt noticed in recent years, the AADC Board has enhanced the way in which AADC programs are offered and information is shared (*e.g.*, web conferencing for luncheon CLEs, the expert witness list serve, social media presence, etc.), in recognition of the ever-increasing time demands on our members' personal and professional lives, but still with an eye toward honoring our Mission Statement of educating members and the judiciary of issues that are important to the defense bar.

No Substitute for Personal Interaction

One casualty of these shifts in the practice of law, and particularly the pervasive use of technology, has been the amount of time spent personally interacting with our colleagues. Through the 1990's and early 2000's, the opportunities I had to interact with judges, other defense lawyers, and plaintiff lawyers was invaluable in my legal development. At that time, every court hearing, no matter how routine, was not done by conference call – it was held at the Court (usually off the record in the Judge's chambers), which meant that the time with the judge was necessarily preceded and followed by discussions with opposing counsel in the reception areas, elevators, and court hallways. Attorneys would also have to physically meet in a conference room, or at lunch, to discuss case issues or defense strategies, whereas now those tasks are accomplished simply by clicking "Reply All." After work, there were several well-known watering holes where judges, defense attorneys, and plaintiff attorneys, alike, could be found sharing stories and experiences, or just being social.

Those days are gone, for sure, and whether that is "good" or "bad" is largely irrelevant because it is, simply, reality. However, the decreasing opportunities for social/semi-professional interaction highlights the importance of making the most of the chances we do have for personal dealings with the bench and colleagues. The question we at the AADC Board have asked is, "How can the AADC enhance the opportunities for interaction between contemporaries, experienced and young attorneys, and the bench, while not unduly encroaching on personal and professional schedules?"

We will continue to offer new ways for members to avail themselves of information and resources through the AADC website and continued rollout of the AADC LinkedIn page, and we will also keep making attendance at the CLE luncheons available through web conferencing. As you will see in the coming year, however, we will consolidate some of the CLE programs in a way that will allow our members to receive the same information and benefits, but space the programs out in a way that will, hopefully, permit more time for attendance at the "big," signature events where, as younger lawyers, many of us began or further developed the personal relationships that are critical for our profession.

NEW Venue for Fall Kickoff!

The first signature event of the AADC year, of course, is the Fall Kickoff on September 28, 2017 (watch your email for the announcement and registration). This year we have decided to branch out and will host the event at the new Sandra Day O'Connor College of Law, an impressive facility regardless of your collegiate allegiances. One of this year's honorees will be Doug Christian, a Past President of AADC and prominent member of Arizona's defense bar. Bringing back a tradition from years past, we will also be "reaching across the aisle" and honoring Pat McGroder, a leading plaintiff attorney, for his consummate

Contents

Correspondence and articles are welcome and should be sent to the Editor. Email articles for submission to Amy Wilkens at awilkens@lorberlaw.com. The right is reserved to select materials to be published. Material accepted for publication becomes property of the Arizona Association of Defense Counsel.

AADC
950 E. Baseline Rd. #104-1025
Tempe, Arizona 85283
Phone: 480-609-3999
Fax: 480-609-3939
Email: admin@azadc.org
www.azadc.org

DIRECTORY OF ADVERTISERS

President's Message *(continued)*

professionalism and contributions to the practice of law in Arizona.

The second signature event (or, more accurately, events) is the December Judicial Reception – one in Phoenix (at Bitter & Twisted) and one in Tucson (at the Arizona Inn). In recent years, the attendance by members of the judiciary has been tremendous, and by reducing the number of intervening AADC events, we hope to make member attendance at this year's receptions reminiscent of years past. With the sheer number of relatively new members of Arizona's bench, not to mention the number of judges who have advanced to higher courts, I have found these opportunities for personal interactions just as important in my 25th year of practice as they were in my 5th year of practice.

We have plans for the Spring events as well, but that can wait because I have already taken up too much of your billable time. We hope to see all of you at the Fall Kickoff, and I welcome any suggestions any of you have as to how the AADC can better serve its members. Here's to a great AADC year!

Charlie Callahan, Esq.

ccallahan@jshfirm.com

President

2017-2018 AADC CALENDAR OF EVENTS

To register for any of these events go to the AADC website, www.azadc.org.

SPECIAL EVENTS AND CLE's

Past Presidents Fall Kick Off
September 28, 2017
5:00-7:00 pm
Sandra Day O'Connor College of Law
111 E. Taylor St.
Phoenix, AZ 85004

SAVE THE DATE Phoenix Judicial Reception
December 7, 2017
5:00-7:00pm
Bitter & Twisted Cocktail Parlour
1 W. Jefferson
Phoenix , AZ

SAVE THE DATE Tucson Judicial Reception
December 14, 2017
5:00-7:00pm
Arizona Inn
2200 E. Elm St.
Tucson, AZ

ADVOCACY LUNCHEONS

Advocacy luncheons are held from 12 - 1 pm at Gust Rosenfeld, One E. Washington St., 15th Floor, Phoenix

Oct. 11, 2017 'Government Liability Update' *Speaker: Les Tuskai*

Nov. 08, 2017 'Reasonable Expenses of Medical Care in PI Cases' *Speakers: John Kastner and Nancy Fraser Michalski*

Dec. 13, 2017

Jan. 10, 2018

Feb. 14, 2018

March 14, 2018

April 11, 2018

May 9, 2018

Business Owners: Is Your Website Accessible to Disabled Users? If Not, Courts Say You Could Be Violating the ADA.

By Matt Anderson, Esq. & Aaron Haar, Esq.
Jaburg Wilk, P.C.

Matt Anderson, Esq.

Aaron Haar, Esq.

Yes, seriously. This is no longer a remote threat cautioned by overzealous lawyers. This is now a real threat that business owners should address now. If you own and/or operate a business, and the business has a website that markets its goods **or** services, you could be liable for violating the Americans with Disabilities Act ("ADA") if your website is not accessible to disabled users. That means you must ensure that your website content can be converted to audio or text depending on the user's disability. This can be accomplished through the use of conversion software—something you've probably never heard of because you have delegated website management to someone else. Recent court rulings from various jurisdictions—including a particularly alarming ruling out of Florida—have ordered businesses to make their websites accessible and held business owners liable for the disabled plaintiff's attorney fees.

Concerned enough to learn more? You should be.

The Problem

Website accessibility lawsuits come on the heels of a flurry of ADA accessibility lawsuits that targeted brick-and-mortar businesses. The plaintiff was the same in each case—a "tester," also known as a professional plaintiff, paid by a lawyer to file hundreds of lawsuits with the purported objective of increasing ADA compliance. Thousands of businesses nationwide were targeted by these lawsuits, with millions of dollars paid in settlements, attorney fees, and property-remediation costs. So, what have attorneys behind these tester plaintiffs done when their accessibility lawsuits were tossed by courts across the country? Answer: Sue businesses based on the inaccessibility of their websites. And, based on several recent decisions, they have found some success.

The most notable, recent website accessibility case is *Gil v. Winn-Dixie*. In that case, a blind man named Juan Carlos Gil alleged he could not access several features on Winn-Dixie's website. This included online coupons, the prescription refill service, and the store locator. For those unfamiliar, Winn-Dixie is a grocery store common in the Southeastern United States. Mr. Gil alleged that the website was incompatible with his screen-reader, a device which, when linked with a compatible website, converts text to audio so he has full access to all website content. Winn-Dixie conceded its website was not fully accessible but argued a website is not a "place of public accommodation" and, thus, did not fall within the ADA. The court was not persuaded by the argument, holding that **because Winn-Dixie's website was "heavily integrated" with its physical stores and served as a "gateway" to those stores, the inaccessibility of Winn-Dixie's website denied Mr. Gil "full and equal enjoyment" of Winn-Dixie's goods and services.** This denial of full and equal access constituted a violation of the ADA. As a result of the violation, Winn-Dixie was ordered to (1) bring its website into compliance with the Web Content Accessibility Guidelines

Business Owners: Is Your Website Accessible *(continued)*

("WCAG"), the current industry standard, and (2) pay Mr. Gil's attorney fees.

The *Winn-Dixie* opinion has sent a ripple through the business community. And it should. No longer must a business owner only be concerned with "drive-by" plaintiffs, targeting only physical locations. The threat is now from plaintiffs who can visit thousands of websites in a few days from the comfort of their living-room sofa. Even more alarming is that a plaintiff could potentially sue a business in a plaintiff-friendly jurisdiction of their choice—such as Florida or California—due to the limitless reach of the internet. In other words, even where a company might transact business primarily in one state, the company is at risk of being sued in other jurisdictions if its website is accessed by disabled users in other states.

The Solution

If your business is a public accommodation (hint: most businesses are) that operates in a physical location and has a website, best practices are to ensure your website meets the accessibility requirements set forth in the WCAG. While the ADA has not been formally amended to include "websites" as places of public accommodation, the Department of Justice thinks they are and has intervened in numerous lawsuits in support of the plaintiff. And, of course, several courts across the country have agreed. Bottom line: there is enough plaintiff-friendly legal authority to motivate plaintiff attorneys to continue filing **and winning** such lawsuits.

How do you determine if your website is accessible, and if it's not, what do you do about it?

1. **Conduct a website audit.** The issue is whether the "source code" underlying a website is compatible with screen-reader and other technology used by the disabled (including text-to-audio conversion for the blind and audio-to-text conversion for the deaf). There are several reputable companies that offer auditing services, which require an analysis of the source code, testing of website features, and identification of necessary code modifications to meet the WCAG. Note: Not all auditors have intimate knowledge of the WCAG; be sure to engage an expert auditor familiar with WCAG standards. Contact legal counsel experienced in ADA accessibility to help identify an appropriate auditor and coordinate the audit.

2. **Consult legal counsel to evaluate the audit.** If your website *does not* meet the standards of the WCAG, the audit will identify areas to be modified. Counsel can assist in evaluating the scope and cost of the modifications, and whether such modifications should be implemented or whether the specific circumstances of your business and website could potentially excuse compliance (see #3 below).

3. **Make changes unless not "readily achievable" to do so.** Generally, you should make the recommended changes to your website. However, certain exceptions may apply depending on the cost of implementing the changes. Costs often depend on the amount of

source code powering your website. Changes can be implemented by the outside audit company or by your own in-house IT specialist. Re-writing source code in compliance with the WCAG is too complex for most web designers. Cost is relevant to this consideration because, if the cost is great enough, the modifications may not be "readily achievable," as defined by the ADA. The readily achievable standard is vaguely defined as "easily accomplishable without much difficulty or expense." Importantly, if you find yourself making a readily achievable argument, then you've probably already been sued and are asking a judge to make that determination. At that point, you've already spent thousands in attorney fees and you'll probably spend thousands more to conclude the case. And, if you lose the argument, you'll be out the cost of updating your website—not to mention paying a great deal more for your opponent's attorney fees.

4. **Don't forget your employees.** Employers are also obligated under the ADA to provide reasonable accommodations to disabled employees to ensure they can carry out their job duties. Review those portions of your website or *intranet* that are accessible only to employees to determine whether accommodations or adjustments may be necessary.

FAQs and Misconceptions

In defending ADA lawsuits, these are the questions we hear most often:

- *I don't sell anything on my website. I only provide information on what services/products are offered at my store/physical location. So why do I need an accessible website?"*

  Online sales are not necessary to mandate website accessibility. The Plaintiff in *Winn-Dixie* wasn't trying to buy anything on the website, only load coupons for use at a later store visit and re-fill a prescription that had to be picked up in the store. The *Winn-Dixie* Court concluded the store's website had to be accessible because it was "heavily integrated" with and served as a "gateway" to the physical location. While the precise scope of this standard is yet to be fully defined and the inquiry is highly circumstantial, it's likely enough that your website allows users to experience in some capacity the goods or services available at your physical location. Even if your website arguably does not fit this standard, the increasing prevalence of the internet and the direction of the law makes it best practices to ensure compliance. And, if past conduct of serial plaintiffs is any indication, the mere possibility of an ADA violation may be enough to put a target on your website.

- *"If someone with a disability can't access something on my website, all they have to do is call the business to tell us what they want, or they can simply come in to the store and we will help them. Isn't that enough of an accommodation?"*

  No. The ADA guarantees *full and equal enjoyment* of all that your business has to offer, not "close enough." That said, if something prevents a business from having an accessible website (such as undue financial hardship), then reasonable accommodations are required—at a minimum.

- *"I own a small business, so making my website accessible is too expensive for me. Aren't I exempt?"*

  No, but it may not be readily achievable to make such changes (see discussion above). However, this is a tough standard to meet, and it will likely require defending a lawsuit to prevail on this defense. The court will look at your total revenue, your other business expenses (e.g., if you had money for an expansion six months ago, why don't you have money to make your website accessible?), and whether your competitors have accessible websites. Note that in order to assert the readily achievable defense, you will still need a cost-estimate from an accessibility auditor.

Takeaway Message

If you have a business with a physical operation and a website—even if you don't offer internet sales—having a website that meets the Web Content

Business Owners: Is Your Website Accessible *(continued)*

Accessibility Guidelines is now best practices. Failing to comply is risky in the current legal climate, especially considering the cost of defending an accessibility lawsuit would likely exceed the cost of modifying your website. And, if you lose in court, you'll have to make your website accessible anyway.

With the allure of attorney-fee awards incentivizing opportunistic plaintiff attorneys, more ADA lawsuits alleging website inaccessibility are sure to come. Internet usage and online shopping will only increase with time, thus keeping this issue distinctly in the legal spotlight. Business owners would be wise to bite the bullet and address website accessibility now, before your card is pulled.

*About the Authors: **Matt Anderson** is an attorney and partner in the **Phoenix law firm of Jaburg & Wilk** where he concentrates his practice on the defense of retailers, restaurants, and hospitality entities, and the defense of medical malpractice and health care matters. He also handles high-exposure litigation involving catastrophic injury, wrongful death, and professional liability. Heading our ADA defense team, Matt has defended all sizes of Arizona businesses in serial ADA accessibility lawsuits—from small local business to multinational companies. Matt can be reached at mta@jaburgwilk.com and 602-248-1077.*

Aaron Haar is an associate at Jaburg & Wilk, where he practices commercial litigation, including intellectual property matters and general business disputes. Aaron is a member of the ADA defense team and has extensive experience defending against serial ADA accessibility lawsuits. Aaron can be reached at akh@jaburgwilk.com and 602-248-1000.

Disclaimer: This article is not intended to provide legal advice and does not establish an attorney-client relationship. Always consult an attorney for legal advice for your particular situation under the laws of your state.

Indecent Exposure: New Decision Confirms Subcontractors Liability To CD Damages Is Expansive.

By Michael Ludwig

Jones, Skelton & Hochuli, P.L.C.

Michael Ludwig, Esq.

How broad is a "broad-form" indemnity provision in a construction contract? A recent decision by the Arizona Court of Appeals has held such a provision allows a developer great latitude in recovering monies paid for settlement and also its attorneys' fees and costs.

Amberwood Development v. Swann's Grading, 1-CA-CV15-0786, arose from a lawsuit by eighteen homeowners against General Contractor, Amberwood, alleging, among other things, construction defects from soil movement. Amberwood arbitrated the dispute with some of the homeowners resulting in a $1.75 million award against it and it settled the claims of the remaining homeowners for another $723,000. Swann's Grading had provided a defense to Amberwood for the arbitration but did not indemnify Amberwood. This suit was Amberwood's effort to recover indemnity from Swanns for the arbitration award and settlement.

Like many construction contracts, Amberwood's subcontract contained a "broad form" indemnity provision which required Swanns to defend and indemnify Amberwood "from any and all claims, damages or Attorney's fees…arising out of the acts or omissions of [Swanns]… with regard to the performance or omission of any of [Swanns] duties and obligations under the contract." At the bench trial, Amberwood presented an expert who opined that because Swanns performed the rough and fine grading, the majority of the damages awarded "arose out of" its work. This evidence was unrebutted by Swann's expert, who only argued that Swanns work did not cause any of the claimed damages. The trial judge agreed with Amberwood and found that 70.6 % of the litigation settlement and 72.7 % of the arbitration award were for issues that "arose out of" Swann's work. The trial judge entered an award against Swanns to reimburse Amberwood those amounts. This award was upheld on appeal.

This case made clear several important lessons for construction defect litigants and insurers. A broad form indemnity provision is highly advantageous for developers and disadvantageous for subcontractors. To prevail, a developer is not required to prove that a subcontractor was negligent, it need only prove that the claims and damages sought by Plaintiffs "arose out of" the work performed by the subcontractor, even if other trades were perhaps partially responsible. Put another way, "fault" of the subcontractor is of little consequence. Once the developer prevails, it is entitled to recover that portion of indemnity and defense fees that are attributed to the subcontractor. The former is usually determined by the jury, the latter by the judge post trial. Additionally, as made abundantly clear in *Amberwood*, this liability can even include being held responsible for the full amount of damages even where another trade is perhaps partially responsible. In CD cases, the attorneys' fees and expert costs (of the developer and Plaintiff) can be as sizable as the construction defect damages at issue.

In conclusion, broad form indemnity provisions can now result in greater potential exposure to subcontractors than previously thought. Early analysis of a subcontractor's scope of work compared to claims alleged by Plaintiff should be done to assist in identifying early potential exposure.

THE NATIONAL ACADEMY OF DISTINGUISHED NEUTRALS

ARIZONA CHAPTER

www.AZMEDIATORS.ORG

The following attorneys are recognized for

Excellence in the field of Alternative Dispute Resolution

NAME	BASED IN	PHONE	CALENDAR
Kevin T. Ahern	Phoenix	(602) 271-7781	☑
Shawn Aiken	Phoenix	(602) 248-8203	☑
Hon. Rebecca Albrecht	Phoenix	(602) 643-2300	☑
Maureen Beyers	Phoenix	(602) 603-1521	☑
Brice E. Buehler	Phoenix	(602) 234-1212	☑
Hon. Edward Burke	Phoenix	(602) 540-8368	☑
Jonathan David Conant	Prescott	(855) 626-6268	☑
David J. Damron	Phoenix	(602) 476-1836	☑
Joe Epstein	Scottsdale	(888) 355-2314	
Hon. Kenneth Fields	Phoenix	(602) 542-2280	☑
Hon. Lawrence Fleischman	Tucson	(520) 326-6400	☑
Sherman D. Fogel	Phoenix	(602) 264-3330	☑
William J. Friedl	Phoenix	(480) 595-5190	☑
Richard A. Friedlander	Phoenix	(602) 285-5004	☑
Alan Goldman	Phoenix	(602) 264-9307	☑
Marc Kalish	Phoenix	(602) 956-3608	☑
Jerome Allan Landau	Scottsdale	(480) 585-3155	

NAME	BASED IN	PHONE	CALENDAR
Michelle T. Langan	Tucson	(520) 760-8663	☑
Mark E. Lassiter	Tempe	(480) 218-4455	☑
Amy L. Lieberman	Scottsdale	(480) 246-3366	☑
Ken Mann	Scottsdale	(480) 789-1025	☑
Paul McGoldrick	Phoenix	(602) 230-5429	☑
Hon. Bruce E. Meyerson	Phoenix	(602) 277-4585	☑
Charles Muchmore	Phoenix	(602) 277-8228	☑
Hon. Daniel Nastro	Phoenix	(602) 996-8312	☑
Hon. Barry C. Schneider	Phoenix	(602) 308-7245	☑
Hon. Stephen H. Scott	Phoenix	(602) 277-8228	☑
Hon. Christopher M. Skelly	Phoenix	(602) 277-8228	☑
Jeffrey R. Timbanard	Paradise Valley	(480) 991-6915	☑
Thomas Lee Toone	Phoenix	(602) 263-0900	☑
S. Jon Trachta	Tucson	(520) 321-1945	☑
Burr Udall	Tucson	(520) 623-4353	☑
Mark D. Zukowski	Phoenix	(602) 263-1759	☑

Check preferred available dates or schedule appointments online directly with Arizona's top neutrals.

Free web service funded by the above members

dri™
The Voice of the Defense Bar

NADN is proud creator of the DRI Neutrals Database
www.DRI.org/neutrals

For more info, watch video at www.NADN.org/about

The Half Death of the Irreparable Injury Rule

By Andrew J. Petersen
Humphrey & Petersen, P.C.

Andrew J. Petersen, Esq.

The irreparable injury rule is based on a body of cases where courts have denied injunctive relief when the complainant has an adequate legal remedy, i.e., monetary damages. Historically, the rule developed from the division of remedies between law and equity. In 1990, Douglas Laycock wrote a law review article entitled *The Death of the Irreparable Injury Rule*, 103 Harv. L. Rev. 687 (1990). A year later, his research became a book, and he concluded that the irreparable injury rule is misleading because of the numerous cases where the meaning of "adequate" or "irreparable" is result oriented. He argued the rule fosters inconsistency and an outdated hierarchy of remedies: "When a judge believes that the irreparable injury rule requires a wrong result, he may do what he thinks is right whether or not he can explain it." His analysis included hundreds of court cases including three Arizona cases: *Ariz. State Bd. of Dental Examiners v. Hyder*, 114 Ariz. 544 (1977), *Clay v. Ariz. Interscholastic Ass'n. Inc.*, 161 Ariz. 474 (1989), and *Hamilton v. Superior Court*, 154 Ariz. 109 (1987). He concluded the rule is not a significant barrier to equitable relief because one can argue the legal remedy is almost never adequate unless the law wants it to be.

Professor Laycock acknowledged that the rule appeared "very much alive at the stage of preliminary relief" but not at the stage of a permanent injunction.

> The irreparable injury rule has largely died at the permanent injunction stage becaue it serves no purpose there; it has teeth at the preliminary injunction stage because it does serve a purpose there. At the preliminary injunction stage, the merits are unresolved, plaintiff may be undeserving, and no remedy at all remains a possible outcome. Defendant has legitimate interests in a full hearing and in freedom to act in ways not yet shown to be unlawful. These interests coincide may also coincide with less savory interests, such as defendant's desire to use delay and litigation costs to force a cheap settlement. But the court may not be able to screen out such interests until it hears the merits.

Id. at 117.

Arizona courts have not, however, abandoned the traditional rule, but most often it is discussed at the preliminary injunction stage. *See also Smith v. Ariz. Citizens Clean Elections Comm'n*, 212 Ariz. 407, 410 ¶ 10 (2006) (discussing a stay on appeal as applying the traditional criteria for the issuance of a preliminary injunction). The criteria for obtaining injunctive relief are: if the claimant establishes a strong likelihood of success on the merits; the possibility of irreparable injury without the requested relief; a balance of hardships favoring the claimant; and public policy favoring the injunction. *Ariz. Ass'n of Providers for Persons with Disabilities v. State*, 223 Ariz. 6, 12 ¶ 12 (App. 2009). Under Ariz.R.Civ.P. 65, the irreparable injury rule is also specifically incorporated into a request for a temporary restraining order.

Considerable discretion is given to trial courts as to the weight given to these criteria. For example, the Arizona Supreme Court in *Smith v. Ariz. Citizens Clean Elections Comm'n*, held "the moving party may establish either 1) probable success on the merits and the possibility of irreparable injury; or 2) the presence of serious questions and [that] 'the balance of hardships tip[s] sharply' in favor of the moving party." 212 Ariz. at 411 ¶ 10 (2006). The Arizona Supreme Court then stated: "The greater and less reparable the harm, the less the showing of a strong likelihood of success on the merits need be. Conversely, if the

The Half Death of the Irreparable Injury Rule *(continued)*

likelihood of success on the merits is weak, the showing of irreparable harm must be stronger." *Id*. And, Arizona courts recognize that when monetary damages are an adequate remedy and can be calculable and "address the full harm suffered" then injunctive relief should be denied. *See IB Prop. Holdings, LLC v. Rancho Del Mar Apartments Ltd. P'ship,* 228 Ariz. 61, 65 ¶¶ 10-11 (App. 2011); *Shoen v. Shoen,* 167 Ariz. 58, 63 (App. 1990). In *IB Prop. Holdings,* the court of appeals affirmed the granting of a preliminary injunction in a disputed easement case and explained that the difficulty of later proving damages (a loss of potential customers) with reasonable certainty can be considered.

This case and others suggest that the rule is far from dead and remains a factor but not the conclusion. It acts as a standard and a guide for limiting injunctive relief but whether injunctive relief is granted depends upon a much broader balancing test and considerable judicial discretion. As Professor Laycock notes, using terminology of "irreparable injury" or "adequate legal remedy" may be a convenient means to avoid fleshing out full consideration of the effects of granting or not granting injunctive relief.

There is never an easy answer to what it means for the exercise of judicial discretion to be well-constituted. Because a reviewing court is deferential to judicial discretion in granting or denying injunctive relief, appellate cases may not be the best place where we find an answer. The standard of review is abuse of discretion and that is not easily overcome. *McCarthy Western Const. v. Phoenix Resort,* 169 Ariz. 520, 523 (App. 1991) (trial court abused its discretion by denying the defendant an opportunity to present evidence). There should be no easy short-cut when exercising judicial discretion in granting or denying injunctive or equitable relief. The balancing test must be well-formed in a candid and thorough manner and "irreparable injury" and "adequate remedy at law" remain strong considerations. Without required and adequate findings of fact and conclusions law, however, it may be difficult for overcoming a cynical and relativist conclusion for judicial discretion.

The distinction between law and equity from which the rule developed has shown a revival

The Half Death of the Irreparable Injury Rule *(continued)*

of sorts with the United States Supreme Court. In a series of cases including *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388 (2006), *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008), and *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139 (2010), the Court has reaffirmed the irreparable injury rule as part of the judicial decision making process in both preliminary and permanent injunctions. *See, e.g.,* Samuel Bray, *The Supreme Court and the New Equity*, 68 Vand. L. Rev. 997 (May 2015). The Court's influence over state court judges may breath additional life into and further strengthen the traditional rule.

YLD President's Message

By John M. Gregory, Esq.
Jones, Skelton & Hochuli, P.L.C.

John M. Gregory, Esq.

It's an interesting time to be a young lawyer. While law firms navigate the challenges of a rapidly changing industry, a lot of focus has been placed on the evolving role of associates. There appears to be much confusion about and interest in how to get the most from these professionals, as both business assets and as the next generation to lead this industry. (As illustrated by Alison Christian's wonderful article in the Spring 2017 issue.)

Young lawyers themselves are facing something of a turbulent time. The ballooning of law school tuition (and student debt) and decline in both law school applications and bar passage rates can leave new lawyers wondering if they've made the right career choice.

The Young Lawyers Division Board is hopeful that the next year can provide at least some answers to these questions. We will again host our semi-annual CLE events this fall and spring. By focusing on concrete, foundational elements of the legal practice, these substantive events help our young lawyers develop practical skills and, in turn, foster confidence in their professional choices.

Just as important are our networking and social events. Expanding one's professional network fosters a strong sense of community and opens doors to future professional and business opportunities. That's why we will also be reaching out to young professionals groups across industries this year, allowing our members the chance to broaden their potential referral networks and gain a better understanding of how their work impacts the larger community.

One of the best ways that more established members of our industry can understand the young lawyers in their firms is to participate in these events as well. It can benefit even the most established lawyer to see what young lawyers know and are being taught by today's experts in CLEs. Having a conversation with a young lawyer outside the office provides context for and common ground in the broader conversation about how to better understand and work with this new generation of lawyers. They are, after all, the future of this industry. (Scary as that may be to some!)

Just because you no longer consider yourself a "young lawyer" does not mean you can't benefit from a Young Lawyers Division event. And there's few things more beneficial to a young lawyer than the chance to talk with a more seasoned veteran of our industry. So please, consider joining us at a CLE or social event this year. Send your firm's young lawyers if you can't make it and take them out to lunch to see what they think. The best way to have a conversation about how young lawyers can help our firms is to start talking to them.

I hope to see you in the coming year.

2017 YLD Softball Tournament

On March 25, 2017, the YLD held its annual charity softball tournament benefiting the Valley's youth. This year, we again partnered with Southwest Human Development. They supplied delicious ballpark food, incredible raffle prizes, as well as several volunteers who helped run the Tournament. On the field, Steptoe & Johnson prevailed over O'Connor & Campbell in the Championship, securing their first tournament championship. However, the real winner was our charity partner, Southwest Human Development, Arizona's largest nonprofit dedicated to early childhood development. We raised about $11,000.00 for Southwest Human Development, through team donations, sponsors, and raffle ticket sales. Southwest Human Development has been a gracious and appreciative partner for our annual tournament, and we could not be prouder to contribute to the outstanding services they provide to young children and their families. To learn more about Southwest Human Development and how you can help, please visit www.swhd.org. The YLD would also like to extend a sincere thank you to our Presenting Sponsor, The Klingler Group, as well as our other Tournament sponsors. Without their generous contributions and unwavering support, this tournament would not be possible. We look forward to seeing everyone back on the field next year!

22nd Annual Barry Fish Memorial Golf Tournament

The 22nd Annual Barry Fish Memorial Golf Tournament was held Friday May 5, 2017 at the Whirlwind Golf Club at Wild Horse Pass. The event was presented by the Arizona Association of Defense Counsel and Lewis Roca Rothgerber Christie LLP. This year the tournament hosted over 100 golfers and sponsors. All proceeds of the tournament benefit the ALS Association Arizona Chapter. Barry Fish was an AADC past president who lost his life to ALS. The tournament has raised more than $200,000 over the past 22 years! ALS Association is the only non-profit volunteer driven health organization dedicated solely to the fight against Lou Gehrig's disease. Thank you to all of the golfers, sponsors, and volunteers who made this year's event another success.

Let's Hear It For The Defense

J.C. Patrascioiu Obtains Defense Verdict in Personal Injury Lawsuit

J.C. Patrascioiu of Curl & Glasson, PLC, obtained a defense verdict after a defense appeal from a Compulsory Arbitration. Plaintiff claimed to have sustained neck, back and left shoulder injuries as a result of a rear end automobile accident caused by Defendant. Defendant admitted that she was liable for causing the subject accident but denied causation and damages. Plaintiff claimed to have incurred over $25,000 in medical damages and $7,200 in lost wages as a result of the accident. The arbitrator awarded $23,174 to Plaintiff. Defendant appealed and the case was tried before a jury. Mr. Patrascioiu presented evidence through expert testimony that Plaintiff did not sustain injuries as a result of the accident and that any injuries Plaintiff had suffered were work related. In addition, Mr. Patrascioiu presented fact witness testimony that the medical bills were inflated and that at least one of the providers had a separate, higher billing rate for personal injury matters. After approximately an hour, the jury returned a unanimous defense verdict.

As a result of beating a Rule 68 Offer of Judgment, Mr. Patrascioiu's client was awarded sanctions against Plaintiff in the amount of $38,257.29.

Jay Fradkin and Anne McClennan Obtain Defense Verdict in Wrongful Death Medical Malpractice Lawsuit

Jay Fradkin and Anne McClennan of Jennings, Strouss & Salmon obtained a defense verdict on behalf of a general surgeon in a wrongful death medical malpractice case after an eight (8) day jury trial. This was a wrongful death medical malpractice case based on the death of a 46 year old man who underwent an elective procedure for GERD (reflux) disease. As a rare complication to the procedure, the decedent/patient developed an infection and died of sepsis due to a leak from the esophagus. Plaintiffs alleged that the defendant general surgeon fell below the standard of care in offering the procedure, failing to obtain informed consent and failing to treat post-operative signs and symptoms of a perforated esophagus. Mr. Fradkin and Ms. McClennan, through the use of medical experts, asserted that the Defendant general surgeon met the standard of care in offering and performing the surgery and that there were no signs of a perforation prior to discharge from the hospital. Plaintiffs requested a verdict of $2,875,000. The jury returned a unanimous defense verdict.

Richard Rea Obtains Defense Verdict

Richard Rea of Law Offices of Farley Choate & Bergin obtained a defense verdict in a personal injury case after a three (3) day trial. Plaintiff, a then 47 year old married plumber, claimed that, on Thanksgiving 2012, defendants Michelle and Ronald Ore and defendant/Good Samaritan Brian Worton assaulted and battered him at an MX motorcycle competition for teen and pre-teen competitors, held at Mesquite MX. Plaintiff sought compensatory and punitive damages.

Michelle and Ronald Ore contended that plaintiff threatened teenagers in their care and physically assaulted Michelle Ore before plaintiff was battered; and contended that the actions of Ronald Ore in punching and kicking plaintiff while he was on the ground and continuing to fight with plaintiff were legally justified by defense of others and self-defense.

Plaintiff claimed that the assault resulted in 6 broken right ribs and a right sided pneumothorax, for which he was hospitalized for several days. Plaintiff also claimed that the assault resulted in the need for a C5/C6/C7 fusion surgery with cage and plate implants; and a L4/L5/S1 spinal fusion with instrumentation. Plaintiff introduced medical bills totaling more than $500,000 which plaintiff claimed were all caused by the alleged assaults. Defendant Ore admitted that plaintiff's 6 right broken ribs, right pneumothorax, and related medical expenses, were caused by the altercations. Defendant Ore contended that those injuries happened when Mr. Worton grabbed plaintiff in a headlock from behind and threw him to the ground, falling with plaintiff, causing the broken ribs and pneumothorax. In addition, Defendant Ore contended that plaintiff had pre-existing neck and back conditions which were the sole cause of his neck and back surgeries. The jury returned a unanimous defense verdict after deliberating less than one (1) hour.

Richard Delo, R. Ryan Womack Obtain Defense Verdict in Medical Malpractice Lawsuit

Richard Delo and R. Ryan Womach of Jennings, Strouss & Salmon obtained a defense

Let's Hear It For The Defense *(continued)*

verdict in a medical malpractice case after a thirteen (13) day jury trial. Plaintiff, a 13-year old child, presented to the St. Joseph's Hospital Emergency Department with complaints of passing out. Upon presentation, Defendant Donald Lauer, M.D., an emergency medicine physician, examined the child and ordered a number of tests, including an EKG. The EKG computer interpretation came back as normal and did not flag any abnormalities. Dr. Lauer admitted Plaintiff to the hospital for further workup for her blacking out and possible seizures. Dr. Lauer understood the EKG would be reviewed and interpreted by a pediatric cardiologist following her admission.

Following admission, Plaintiff was seen by three pediatric hospitalists and two pediatric neurologists, who ultimately diagnosed her with seizures. On the day after her admission, Defendant Dan Thuy N. Dao, D.O., a pediatric hospitalist, rounded on Plaintiff but did not mention the EKG or the anticipated pediatric cardiology EKG interpretation in her entry in Plaintiff's medical chart. The next day, Plaintiff was discharged by another pediatric hospitalist, Peter Chanin, M.D. (former party to lawsuit), also with no reference or communication as to the outstanding EKG interpretation. The day following discharge, the pediatric cardiologist, Shabib Alhadheri, M.D. (former party to lawsuit), interpreted Plaintiff's EKG as abnormal but did not advise Plaintiff or any of her treating physicians regarding his interpretation.

Approximately two years later, Plaintiff experienced full cardiac arrest, which resulted in catastrophic brain damage leaving her in a permanent vegetative state. During Plaintiff's subsequent medical treatment, Dr. Alhadheri's EKG interpretation as abnormal from two years prior was discovered. Plaintiff filed a lawsuit. Prior to trial, St. Joseph's Hospital, the discharging pediatric hospitalist Dr. Chanin, and the pediatric cardiologist Dr. Alhadheri, settled their claims with Plaintiff. Plaintiff alleged that Dr. Lauer fell below the standard of care in failing to properly interpret Plaintiff's EKG. Plaintiff alleged Dr. Lauer was required under the standard of care to not only admit her to the Hospital but also to order a cardiology consultation based upon her abnormal EKG. Plaintiffs provided expert testimony alleging that Plaintiff's future care and lost income range from $5-$12 million.

Defendant Dr. Lauer testified that he met the standard of care in all respects. Dr. Lauer diagnosed Plaintiff with black-out and new onset seizure but did not rule out cardiac causes. Dr. Lauer understood at the time, and relied upon the fact that the EKG machine would flag abnormal values. The machine interpretation of Plaintiff's EKG was normal and did not flag any abnormalities. As to EKGs taken at St. Joseph's Hospital, Dr. Lauer understood a cardiologist would review all the Emergency Department EKGs, and he relied upon this process.

After deliberating, the jury returned with a defense verdict.

Charles M. Callahan and Daniel O. King Obtain Defense Verdict

Charles M. Callahan and Daniel O. King of Jones, Skelton & Hochuli, PLC obtained a defense verdict for their client, a Kingman, Arizona mental health clinic, after a six (6) day jury trial. The mental health

Let's Hear It For The Defense *(continued)*

clinic was sued by a Security Director of a nearby hospital. Plaintiff alleged that the mental health clinic negligently allowed an involuntarily committed mental health patient to elope from the facility. When the patient left the facility he went to the nearby hospital and was confronted by Plaintiff. An altercation between Plaintiff and the patient ensued, and Plaintiff alleged that he sustained low back injuries in the altercation which eventually resulted in a spinal fusion surgery.

Plaintiff claimed that he was permanently disabled as a result of his injuries and sought $162,000 in medical expenses, $300,000 in future medical expenses, $1M in future loss of earning capacity, and pain and suffering damages. The jury deliberated two (2) hours and returned a defense verdict.

Don Myles, Michele Molinario and Amelia Esber Prevail on False Arrest Case Against City of Yuma Police Sergeant

Don Myles, Michele Molinario and Amelia Esber of Jones, Skelton & Hochuli, PLC prevail on summary judgment in a 42 U.S.C. § 1983 civil rights action for false arrest against a City of Yuma Police Sergeant. The case involved whether there was probable cause to arrest Plaintiff, a former U.S. Border Patrol Agent. U.S. Border Patrol revoked Plaintiff's enforcement authority, and requested the return of the government-issued property in Plaintiff's possession. City of Yuma police officers sought to retrieve the government-issued firearm, badge and credentials, but Plaintiff refused. He gave various conflicting statements about the location of the property. Plaintiff was then arrested for theft and false reporting. Plaintiff filed a Cross-Motion for Summary Judgment.

The central issue to the Motion for Summary Judgment was whether the Police Sergeant had probable cause to arrest Plaintiff for either theft or false reporting. District Court Judge Susan R. Bolton denied Plaintiff's Cross-Motion for Summary Judgment and found that there was probable cause to arrest for false reporting. Plaintiff's own testimony confirmed that law enforcement officers are trained to know the location of their service weapons and credentials. Based on this understanding, and Plaintiff's inconsistent statements about the whereabouts of the property, a reasonable officer would have sufficient grounds to believe that Plaintiff was knowingly providing false statements. As such, there was no genuine issue for trial. Alternatively, Judge Bolton found that the Police Sergeant was entitled to qualified immunity since it could be reasonably debated whether clearly established law was violated. Judgment was entered in favor of the Yuma Police Sergeant.

"Fathers Be Good to Your Daughters"[1] Interview with Distinguished Service Award Honoree – Doug Christian

By Alison Christian and Cara Christian
Christian Dichter & Sluga

Doug with daughters, Alison and Cara

The AADC's Treasurer and the Vice President of the Young Lawyers Division sat down with AADC's 1996 president, Doug Christian. They knew where to find him—in the office down the hall.

Q: So what was AADC like way back then?

A: It was in transition. We had just recently elected our first woman president, Kay McCarthy, and changed our name to the Arizona Association of Defense Counsel. Until the mid-1990's AADC was PADC, the Phoenix Association of Defense Counsel. I believe that my friend and then-president Jim Evans came up with the idea and that we immediately enlisted Marty Humphrey down in Tucson to attract members of the Tucson defense bar. Hopefully that is still working nicely for you.

Q: What was the mission of the organization back then? Has it changed?

A: It's unlikely that we had a formal mission statement. Our purpose was something of a moving target. Again, probably in part because of a transition in the defense practice here in Arizona and nationally. We were never quite sure whether we were advocating the interests of defense lawyers, insurers or defendants. And these interests were beginning to diverge. Through my tenure on the Board, there was never unanimity and occasionally spirited debate. Most national defense organizations seem to have opted for trying to help their members sustain high-quality, efficient practices, whomever their clients or adversaries might be.

Q: Anyone stand out in your mind as having influenced your involvement in AADC?

A: Barry Fish. He was my friend and then partner at Lewis and Roca when he became president of AADC. His tenure was cut short by ALS and I actually assumed most of his year as president as well as mine succeeding him. Making me, I guess, the longest tenured president of the organization. Most of you only know Barry Fish as the name on a shirt that you wear to the office on casual Friday but he was a superstar. ALS took a brilliant lawyer and extraordinary person from us way too soon.

Q: So, any other uplifting observations for our members?

A: Death is near for all of us.

Q: No, seriously…or not so seriously, was AADC fun for you?

A: Sometimes too fun. I'm sure that all sanctioned AADC events are alcohol free now, but that was not always the case. No need, really, to elaborate. Especially to the two of you.

Q: Anything you look back on and say, "You know, I think I got that right?"

1. JOHN MAYER, DAUGHTERS (Columbia Records, 2003).

"Fathers Be Good to Your Daughters"

(continued)

A: Twenty years ago I saw both a need, and an opportunity, for mentoring bright young women lawyers in all aspects of the practice: professionalism, doing good work, giving clients a day's work for a day's pay, client acquisition. Back then, not all of the mentoring of young women lawyers could be done by experienced women lawyers, simply because of demographics. Gena Sluga has been with me for those twenty years and working with her is the single best decision I've made as a lawyer. She's in charge now and I work for her. Then having the opportunity to work with my daughters, both destined to be much better at this than I am, is icing on the cake. We are now a certified, women-owned law firm comprised of an equal mix of top-notch men and women lawyers. And now, I'm just Doug Who?

Q: Ok, so how about your 42 years practicing defense law here in Phoenix? Any final words of wisdom you can share with younger lawyers?

A: "Fathers be good to your daughters…"

The People's Lawyer
Interview with Distinguished Service Award Honoree – Plaintiffs' Counsel - Pat McGroder

By Craig McCarthy, Esq.
Gust Rosenfeld

Pat McGroder, Esq.

I never would have guessed that Pat McGroder and I had anything in common except our Irish heritage. After years of following his career as the pre-eminent catastrophic injury plaintiff's attorney in Phoenix, and having had the pleasure of working with him on a few cases over the past 25 years, I have grown to revere a man so accomplished, so driven and so obviously dedicated to his cause. I have particularly admired his commitment to the ethical execution of his duties to all participants in the civil litigation process. Then again, many would assume it is easy to take the high road when you are living near the top of the world.

As it turns out, Pat McGroder's rise to the top of the trial lawyer's pecking order in Arizona was anything but pre-ordained. After surviving four years of undergraduate studies in South Bend at Notre Dame, Pat attended law school at the U of A. He did well but says "nobody would hire me" when he looked for work in Phoenix following graduation. "I simply could not find a job anywhere," he recalls. That's where our [perhaps only] common ground comes in. Apparently, "could have been" college athletes are often drawn to the courtroom and those without blue ribbon pedigrees sometimes learn to fend for themselves. Eventually, the former basketball player and boxer hung a shingle and began doing court appointed criminal defense work. He tried his first case the Monday after the Saturday he was sworn in. After learning his way around the courtroom in criminal matters, he began doing insurance defense work for most of the major insurers and enjoyed a very successful defense practice for 15 years. "I always saw myself first and foremost as a trial lawyer, not a guy who belonged on one side or the other."

Trial work is hard and it is a craft Pat is proud to mastered. He lost his first five civil jury trials but he kept on plugging. He considers his philosophy to be, simply, "whatever it takes." Within the bounds of decency and integrity, of course. "I may not be the smartest guy in the room but I will never be outworked," says the veteran of nearly 100 trials. He went to work for—and later became partners with—Phil Goldstein who taught him to learn every aspect of the litigation process (including how to file a complaint with the clerk) and the importance of preparation. Over 47 years of practice, he has come to associate himself with the plight of the "everyman" who was overmatched in every way by our institutions of commerce and government that sometimes cause harm.

Pat practiced either as a sole practitioner or with Phil Goldstein for over 30 years. He came to see his profession "as a calling" and his role in that profession as an expediter of the "problem a solving process." After a short stint in another small firm setting, Pat made the very unlikely move of joining a large and prestigious full service law firm, Gallagher & Kennedy, in an effort to secure the resources and platform necessary to take on the largest of product liability and class action cases on behalf of catastrophically damaged plaintiffs. The experiment has been a smashing success. Both as a sole practitioner and as the leader of his Gallagher & Kennedy practice group, Pat has handled more high profile personal injury cases than anyone in Arizona over the past 30 years and has secured hundreds of millions for his clients along the way. From the famous Jason Schechterle case to the 2007 news chopper crash, from the Yarnell hotshots death benefits litigation to the Brian Terry "Fast and Furious" scandal,

The People's Lawyers *(continued)*

Pat has refused to shy away from David vs. Goliath conflicts. He believes in his clients and he still believes in the process. During a recent lunch with Pat, I asked him a few questions about the world of litigation, lessons learned along the way and his advice for young litigators just coming of age.

Q: What are the biggest changes, good and bad, you have seen in the profession?

A: I am amazed at the intellectual capabilities and the creativity of our many lawyers. On the other hand, I seldom see the "whatever it takes" mentality that has driven me. Technology has improved many things but I think the lack of personal relationships and professional interaction on a human level is a regrettable change. I also think lawyer advertising has demeaned our profession and ruined our reputation in the community.

Q: How has the judiciary changed during your career?

A: There are so many judges now who did not try cases as lawyers and also, many former criminal prosecutors who never did civil trial work. It is hard to understand the process when you were never part of it.

Q: What advice would you give to a lawyer just starting out?

A: Assume you know nothing, learn something new every day and remember, there are no stupid questions!

Q: Why is mentoring important?

A: It is more than just teaching trial tactics or litigation strategies. It is about teaching people how to conduct themselves, how to comport themselves to a model of professionalism they will be proud to own as their reputation develops.

Q: Would you do things any differently if you had your career to do over?

A: No. I had to learn many things the hard way and my career path took me through many difficult places but my success has afforded me the honor and privilege of being an advocate for the people and that is very satisfying to me.

AADC Annual Meeting at the JW Marriott Phoenix Desert Ridge Resort & Spa

The AADC held its Annual Meeting at the JW Marriott Phoenix Desert Ridge Resort & Spa in Phoenix in June. The CLE programs included Lori Voepel, Jennifer Anderson and Jonathan Barnes speaking on final judgments and shaping issues for appeal; Patrick Omilian speaking on bad faith claims; Steve Plitt, David Shughart, and Jon Neuman on working with insurance bad faith expert witnesses; Kathy Langley, Hon. Chris Whitten, John Ager and Lisa Duran regarding civility and professionalism.

This year's annual conference also featured a live Arizona Court of Appeals argument in *Sloan v. Farmers Insurance* (Case No. 1 CA-CV 16-0046). The case is an insurance bad faith matter related to a fire loss brought by Ms. Sloan. Farmers obtained a defense verdict after a 24-day trial, only to have that verdict overturned by the trial court under Rule 60(c)(6) due to subsequent DPS determinations that two Phoenix Fire Department investigators had engaged in misconduct related to the investigation of Ms. Sloan who was initially charged with arson. Donald Myles, Jr. argued for Farmers Insurance and Stanley Feldman argued for Ms. Sloan.

2017-2018 Board of Directors

Chris H. Begeman, Secretary
Righi Fitch Law Group
2111 E. Highland Ave., Ste. B440
Phoenix, AZ 85016
602-365-6776
Fax: 602-385-6777
chris@righilaw.com

Anoop Bhatheja
Sanders & Parks, P.C.
3030 N. 3rd Street, Suite 1300
Phoenix, AZ 85012
602-532-5664
Fax: 602-230-5064
anoop.bhatheja@sandersparks.com

Charles Callahan, President
Jones, Skelton & Hochuli, P.L.C.
40 N. Central Ave. Ste. 2700
Phoenix, AZ 85004
602-263-1700
Fax: 602-263-1784
ccallahan@jshfirm.com

Alison Christian, Treasurer
Christian Dichter & Sluga
2700 N. Central Ave., Ste. 1200
Phoenix, AZ 85004
602-792-1706
Fax: 602-792-1710
achristian@cdslawfirm.com

Tom Duer
Rai & Barone
3033 N. Central Ave. Ste. 500
Phoenix, AZ 85012
602-476-7100
Fax: 602-476-7101
tom.duer@raibarone.com

Scott D. Freeman, DRI State Rep.
Fennemore Craig
2395 E. Camelback Rd. Ste. 600
Phoenix, AZ 85016
602-916-5000
Fax:916-5999
sfreeman@fclaw.com

Megan Gailey
Broening, Oberg, Woods & Wilson
1122 E. Jefferson St.
Phoenix, AZ 85034
602-271-7790
Fax: 602-252-4197
bwp@bowwlaw.com

John Gregory, YLD President
Jones, Skelton & Hochuli
40 N. Central Ave. Ste. 2700
Phoenix, AZ 85004
602-262-1700
Fax: 602-263-1784
jgregory@jshfirm.com

Adam E. Lang, President Elect
Snell & Wilmer
One Arizona Center,
400 E. Van Buren
Phoenix, AZ 85004
602-382-6522
Fax: 602-382-6070
alang@swlaw.com

Michael L. Linton
McBan Law Offices
1795 E. Skyline Dr. Ste. 155
Tucson, AZ 85718
520-624-6446
Fax: 520-624-6617
mlinton@macbanlaw.com

Craig McCarthy, Immed. Past President
Gust Rosenfeld
One E. Washington, Ste. 1600
Phoenix, AZ 85004
602-257-7974
Fax: 602-254-4878
mccarthy@gustlaw.com

Heather Neal
Quintairos, Prieto, Wood & Boyer
2390 E. Camelback Rd. Suite 6440
Phoenix, AZ 85016
602-954-5605
Fax: 602-954-5606
heather.neal@qpwblaw.com

Jill J. Ormond
Lewis Roca Rothgerber Christie
201 E. Washington St., Ste. 1200
Phoenix, AZ 85004
602-262-5713
Fax: 602-262-5747
jormond@lrrlaw.com

James Robles
Perry, Childers, Hanlon & Hudson PLC
722 E. Osborn #100
Phoenix, AZ 85014
602-266-0392
Fax: 602-266-0691
jarobles@pchhlaw.com

Brian Rubin
Thomas, Rubin & Kelley
2700 N. Central Ave. Ste. 800
Phoenix, AZ 85004
602-604-7509
Fax: 602-285-4482
brubin@trkfirm.com

Zara Torosyan
Clark Hill
14850 N. Scottsdale Rd.
Scottsdale, AZ 85254
480-822-6739
Fax: 480-684-1172
ztorosyan@clarkhill.com

Les Tuskai
City of Phoenix
200 E. Washington St., Ste. 1300
Phoenix, AZ 85003
602-262-6761
Fax: 602-534-2487
les.tuskai@phoenix.gov

Jeff Warren
Bowman and Brooke
2901 N. Central Ave. Suite 1600
Phoenix, AZ 85012
602-643-2300
Fax: 602-248-0947
Jeffrey.warren@bowmanandbrooke.com

Amy Wilkens
Lorber Greenfield & Polito
3930 E. Ray Rd. Ste. 260
Phoenix, AZ 85044
602-437-4177
Fax: 602-437-4180
awilkens@lorberlaw.com

Kendall Wilson
Desert Schools
148 N. 48th St.
Phoenix, AZ 85034
602-602-433-7000
Fax: 602-634-7108
kendall.wilson@desertschools.org

John Wittwer
The Cavanagh Law Firm
1850 N. Central Ave. Ste. #2400
Phoenix, AZ 85004
602-331-3660
Fax: 602-331-8600
jwittwer@cavanaghlaw.com

Arizona Association of Defense Counsel
THE CIVIL DEFENSE BAR

950 E. Baseline Road, #104-1025, Tempe, Arizona 85283, Phone: (480) 609-3999 Fax (480) 609-3939, admin@azadc.org
www.azadc.org

Membership Application

Membership in AADC is open to any attorney who has been admitted to the practice of law in Arizona and who practices a substantial amount of defense litigation. The Association's purpose is to provide a forum for discussion and education, and to further professionalism of the defense bar. Please return the application with your membership dues of **$200.00** per attorney, **$100.00** per in house counsel or public sector attorney, **$3,300.00** for law firms with 20 or more members, $**1,700.00** for law firms with 10-19 members or **$850.00** for law firms with 5 - 9 members and **$50.00** for retired members. You can also renew and pay online at www.azadc.org. ***FREE MEMBERSHIP TO ATTORNEYS PRACTICING 1 YEAR or LESS.***

Name: _____

☐ New Membership ☐ Renewal

Firm*: _____

Firm web address: _____

Address: _____ City: _____ State: _____Zip: _____

Telephone: _____ Fax: _____ E-mail: _____

Referred by AADC member:_____

Choose up to five from the Primary Practice Areas listed below:

_____Yes, I would like to serve on a committee and/or substantive law section.

___Commercial Law	___Construction Liability
___Insurance Coverage	___Negligence and Insurance
___Products Liability	___Professional Liability
___Worker's Compensation	___Employment Law

_____No, I do want to serve on a committee or substantive law section at this time

Committees	Substantive Law Sections
___Legislative	___Construction Liability
___Amicus	___Government Liability
___Programs and Membership	___Negligence and Insurance
___Publications	___Professional Liability

***Firm memberships should provide a list of the names' of the attorneys at the firm who are interested in receiving information about events and activities of the AADC.**

AADC estimates that 15% of your dues payment may not be deductible as a business expense because of AADC's lobbying activities on behalf of its members.

Method of Payment: Check or Credit Card (Visa, MC, Discover or American Express)

Credit card number: _____ Exp. Date: _____ Security Code (CVV): _____

Address where statement is mailed:_____

Authorized Signature: _____

I HEREBY APPLY FOR MEMBERSHIP AND CERTIFY:
That I am actively engaged in the practice of law in Arizona, devoting a substantial amount of my litigation -related time to the defense of civil litigation.

_____ _____
Signature Date

Please Support our Sponsors, Who Help with the Success of our Organization!

Augspurger Komm Engineering, Inc.
David Komm
3315 E. Wier Ave.
Phoenix, Arizona 85040
602-443-1060
dave.komm@akeinc.com

Compex Legal Services
Jim Gackle
4531 N. 16th St #120
Phoenix, Arizona 85016
602-614-3322
jim.gackle@compexlegal.com

Comprehensive Pain Management
Danielle Baker
3811 E. Bell Rd. Ste. 207
Phoenix, Arizona 85032
602-971-8200
dbaker@schurgin.com

Dawn Cook Life Care Planning Consulting
Dawn Cook
6440 Sky Pointe Dr. #140-475
Las Vegas, Nevada 89131
702-544-2159
dawn@dawnrn.com

Epps Forensic Consulting PLLC
Joe Epps
13880 N. Northsight Blvd. Ste. 115
Scottsdale, Arizona 85260
480-595-0943
jepps@eppsforensics.com

Esquire Solutions
Jill Smith
3800 N. Central Ave. Ste. 1700
Phoenix, Arizona 85012
602-266-2221
jsmith@esquiresolutions.com

Exponent
Angela Meyer, PhD, PE
149 Commonwealth Dr.
Menlo Park, California 94025
650.688.6951
ameyer@exponent.com

Glennie Reporting Services
Lisa Glennie
1555 E. Orangewood Ave.
Phoenix, Arizona 85020
602-266-6535
lglennie@glennie-reporting.com

High-Stakes Communication
Deborah Johnson
1634 E. Echo Ln.
Phoenix, Arizona 85020
602-216-0049
deborah@high-stakescommunication.com

Integrated Medical Evaluations, Inc,
Janet Nilsen
401 W. Baseline Rd. Ste. 206
Tempe, AZ 85283
952-237-3411
jnilsen@imewest.com

JCR Settlements
Jim Garrison
10105 E. Via Linda, Suite 103
Scottsdale, Arizona 85258
480-478-0159
jgarrison@jcrsettlements.com

National Academy of Distinguished Neutrals, AZ Chapter
Darren Lee
104 Churchill Way
W. Palm Beach, Florida 34111
813-606-5678
director@nadn.org

Navigant Consulting
Gregg Curry
Collier Center
201 E. Washington Ste. 1700
Phoenix, Arizona 85004
602-528-8010
gcurry@navigant.com

Peterson Geotechnical Group
Curt Peterson
4100 S. Lindsay Rd. Ste. 122
Gilbert, Arizona 85297
480-219-0014
curt@pgg-eng.com

ProNet Group, Inc.
Andrea Morin
18000 N 80th St, Ste A
Scottsdale, Arizona 85260
602-525-6443
amorin@pronetgroup.com

Rimkus Consulting Group
Matthew Thompson
1661 E. Camelback Rd. Ste. 124
Phoenix, Arizona 85016
602-216-2200
mmthomps@rimkus.com

Seymour Reporting Services
Rosina Seymour
137 E. Elliot Rd. #2473
Gilbert, Arizona 85299
602-258-5800
office@srsreporting.com

Simon Consulting, LLC
Peter Davis
3200 N. Central Ave. Ste. 2460
Phoenix, Arizona 85012
602-279-7500
pdavis@simonconsulting.net

Subrosa Investigations
Dan Perez
3877 N. 7th St. Ste. 100
Phoenix, Arizona 85014
602-256-2266
dperez@subrosapi.com

The Kenrich Group
David Bones
3200 N. Central Ave., Suite 2170
Phoenix, Arizona 85012
602-274-0286
dbones@kenrichgroup.com

The Klingler Group
Elisabeth Klingler
10132 N. Oracle Rd. Suite 100
Tucson, Arizona 85704
480-899-1814
eklingler@klinglergroup.com

The Ward Group
Chantell Cornett
2525 E. Arizona Biltmore Circle,
Suite C130
Phoenix, Arizona 85016
602-388-8618
chantell@wardgrp.com

Total Networks
Dave Kinsey
4201 N. 24th St Ste. 230
Phoenix, AZ 85016
602-412-5025
info@totalnetworks.com

Unified Investigations and Sciences
Rick Baldwin
407 S. 107th Ave. Suite A22
Tolleson, Arizona 85353
970-443-4939
rbaldwin@uis-usa.com

Vocational Diagnostics, Inc.
Shannon Wilson
3030 N. Central AVe. Ste. 406
Phoenix, Arizona 85012
800-444-4VDI
shannonw@vocationaldiagnostics.com

Arizona Association
of Defense Counsel

950 E. Baseline Rd. #104-1025
Tempe, Arizona 85283

SAVE THE DATE!!

Past Presidents Fall Kick Off - September 28, 2017

5:00-7:00 pm

Sandra Day O'Connor College of Law

111 E. Taylor St.

Phoenix, AZ 85004

Honoring Patrick McGroder and Doug Christian with the Distinguished Service Award.

For more details go to www.azadc.org.

Photo: Courtesy of ASU Sandra Day O'Connor College of Law