

C

*Mary Cameron v. John Christner Trucking, Kathryn Westbrook, Royal Express, Inc. and Paul Horta, Jr.,*¹⁷
Maricopa County Superior Court,
CV2006-011915

This case arose from a multi-vehicle crash in a dust storm. Kathryn Westbrook was driving a tractor-trailer for John Christner Trucking on interstate 10 on Aug. 11, 2004. A dust storm came through, and she stopped her truck in the road without its lights on. Martin Cameron was driving behind the truck with his wife Mary Cameron as a passenger. The Cameron car rear-ended the tractor-trailer. Mary Cameron was getting out of the car when it was side-swiped by another tractor-trailer and then rear-ended by Paul Horta, Jr., who was driving a tractor-trailer for Royal Express. The Cameron car then caught on fire. Martin Cameron was killed by the collision and fire, and Mary Cameron fractured her ankle and foot and had degloving injuries to her leg. The Camerons claimed that Westbrook and Horta were negligent for their part in the crash. They asked the jury for more than \$6 million. Westbrook, Horta and their companies argued that all of the drivers had reduced visibility due to the dust storm and that they acted reasonably. Arizonans must be sympathetic to dust storm havoc, because we also noted a significant defense verdict in 2006 that arose from similar facts.

D

*Albert Pellegrini v. L.A. Fitness Sports Club, L.L.C. and Brunswick Corporation,*¹⁸
Maricopa County Superior Court,
CV2008-002245

Albert Pellegrini, 59 years old, was working out at L.A. Fitness using a back extension machine when the weights disconnected from the roller pad and he fell off the rear of the machine. He sustained a spinal cord injury that resulted in weakness, partial paralysis and spasticity below chest level. Pellegrini claimed L.A. Fitness failed to properly inspect, maintain and repair the weight machine. He claimed that Brunswick Corporation defectively designed the machine because it did not have positive stops and locking mechanisms for the collar that held the weights.

Pellegrini asked the jury for more than \$1.3 million. L.A. Fitness and Brunswick alleged that Pellegrini did not use the available seatbelt or foot peg safety device. They defended that Pellegrini fell off the machine while still sitting on it and before operating it. Brunswick maintained the machine was not defective and its warnings and instructions were adequate.

E

*Diana Hix v. Red Mountain Anesthesiologists and Brian Delisio,*¹⁹
Maricopa County Superior Court,
CV2007-005171

This was a medical malpractice case. John Hix was a 46-year-old human resource director who went in for gastric bypass surgery. Alexander Villares was the surgeon and Brian Delisio was the anesthesiologist. Complications developed, and after two additional surgeries over the next four days, Hix died. The Hix family alleged that Delisio fell below the standard of care when he failed to order appropriate post-operative blood testing, failed to engage in direct physician-to-physician contact with the surgeon (Villares), and failed to ensure that the nursing staff and surgeon communicated adequately. The Hix family asked for more than \$4.5 million. Red Mountain Anesthesiologists and Delisio alleged that blood tests were not required, and the death was due to the malpractice of the surgeon and the nursing staff.

F

Joan Kilbey v. Integrity First, L.L.C.,
Maricopa County Superior Court,
CV2008-050519

This was a retrial of an employment case alleging wrongful termination and retaliation. Joan Kilbey was a real estate agent and designated broker who worked for Integrity First in 2007. She claimed that in her 19 days on the job, she saw and reported numerous violations of Arizona real estate law. She alleged that Integrity First terminated her for reporting the violations. Kilbey asked the jury to award her about \$800,000 in past and future lost earnings. Integrity First defended that Kilbey was responsible for handling agent compliance issues and discussion about those issues caused no concern. Instead,

she was terminated for poor interpersonal skills and lack of basic professionalism. The jury found there was no retaliation.

Where Are They Now?

So what about the rest of the story? After a major verdict such as those described in our article each year, what happens to these cases? Many of them are appealed, some are paid in full, and, like the rest of the universe of civil cases, many are settled. This is not a comprehensive history of all the recent verdicts, but here are a few of our past years' notable verdicts that had major developments in 2010:

Bard Peripheral Vascular, Inc. and David Goldfarb v. W.L. Gore & Associates, Inc., United States District Court for the District of Arizona, CV03-0597. This is one of the longest patent cases to continue to be litigated and it relates to a prosthetic vascular surgical graft first developed in 1974. It was the Number 2 jury verdict in 2007 at \$185 million. Double damages, interest and attorneys' fees were later awarded, and a royalty rate was set. Final judgment was entered in August 2010 for approximately \$660 million. Gore has again appealed.

*Anita Graham et al. v. ValueOptions, Inc. and VO of Arizona, Inc.,*²⁰ Court of Appeals of Arizona Division One, 1 CA-CV 09-0431. This was the Number 5 verdict in 2008 for \$36 million. In this case, Patrick Graham was killed in a shooting by a paranoid schizophrenic who had been under psychiatric care with ValueOptions. The jury awarded \$11 million in compensatory damages and \$25 million in punitive damages. In 2010, the Arizona Court of Appeals affirmed the verdict in part and reversed in part. The court held that the jury properly found that ValueOptions' duty extended to Graham and to the public and upheld the compensatory damages. The court held there was no clear and convincing evidence that ValueOptions acted with an "evil mind," the standard in Arizona for punitive damages, and reversed that part of the judgment.

*Jeanne Steven et al. v. Swift Transportation Co., Inc.,*²¹ Court of Appeals of Arizona Division One, 1 CA-CV 08-0505. This