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Charles D. Onofry

MANAGING PARTNER

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"I believe in providing clients with frank advice on the risks of litigation and trial, including our perspective on settlement. While settlement is essential to risk management, settlement is most advantageous when the opposition knows that the client and opposing attorney have no fear of going to trial. I relish the challenge of a difficult case before a jury and am very comfortable taking my cases to trial."

Over his three-decade litigation career, Chuck Onofry has represented individuals, small businesses, franchises, and more than 100 insurance companies and self-insureds. He has tried or arbitrated more than 250 cases to conclusion while practicing extensively in the areas of premises liability (including dram shop and negligent security), construction defect litigation, motor vehicle liability, motor carrier and common carrier liability, insurance coverage, commercial litigation, and appeals to various state and federal courts.

Mr. Onofry is a member of the American Board of Trial Advocates (ABOTA), is listed in *The Best Lawyers in America*® and Super Lawyers, and has earned the AV Preeminent® rating from Martindale Hubbell®. He serves as a judge pro tem, has published several defense-related articles in DRI's *For The Defense*, has served as casenote editor for DRI's Compendium on "Spoliation Evidence" for Arizona, and has written and lectured on a variety of topics involving trial techniques.

PRACTICE AREAS

Appeals
Auto Liability
Commercial Litigation
Construction Litigation
Dram Shop Liability
Employment Law
Insurance Coverage and Bad Faith
Personal Injury and Wrongful Death
Premises Liability
Products Liability
Professional Liability
Real Estate Litigation
Transportation Litigation

EDUCATION

J.D., Villanova University School of Law, 1986; *Villanova Law Review*, Staff Member, 1985-86
B.A., Hamilton College, Economics, 1982

CLERKSHIP

Judicial Clerkship, Honorable Roger G. Strand, U.S. District Court, District of Arizona, 1986-1987

HONORS AND AWARDS

American Board of Trial Advocates (ABOTA)
Certified Specialist in Personal Injury and Wrongful Death, Arizona Board of Legal Specialization
The Best Lawyers in America®: Insurance Litigation, 2016-present; Commercial Litigation, 2018-present; Insurance Law, 2019-present
Super Lawyers, 2015-present
AV Preeminent® Peer Review Rating, Martindale-Hubbell®
G. Duffield Smith Award, Defense Research Institute, 1994 (Annual award to the author of the most outstanding article published in DRI's monthly publication, *For the Defense*)
Scribes Award Recipient, 1986 (Presented to the graduating member of the Villanova Law Review who has demonstrated outstanding legal writing)

BAR AND COURT ADMISSIONS

U.S. Court of Appeals, Second Circuit, 1997
U.S. District Court, Southern District of New York, 1997
U.S. Court of Appeals, Ninth Circuit, 1993
U.S. District Court, District of Arizona, 1989
Arizona, 1989
U.S. District Court, Middle District of Pennsylvania, 1987

PROFESSIONAL MEMBERSHIPS

State Bar of Arizona
Maricopa County Bar Association

PUBLICATIONS

Defense Research Institute "50 State Compendium on Spoliation of Evidence," Contributing Editor, Arizona Section
"Automobile Accident Reconstruction: Understanding the Basics," *For the Defense*, January 1997
"Dealing With Soft Tissue Injuries," *For the Defense*, May 1995
"Fibromyalgia: Liability Claims Are on the Increase," Jennings, Strouss & Salmon Tort & Insurance Newsletter, Spring 1995
"Mandatory Disclosure of Information: One State's Experience" (co-author with W. Birmingham), *For the Defense*, July 1994
Casenote, *Deese v. State Farm Mut. Auto Ins. Co.*, "Covered Events" (newsletter of the DRI Insurance Committee), Winter 1994
Comment, "The Merchant's Exception to the Uniform Commercial Code's Statute of Frauds," 32 Vill. L. Rev. 133 (1987)

SPEECHES AND PRESENTATIONS

"Building Your Civil Trial Skills," National Business Institute, November 2008
"Stigma Damages," State Bar of Arizona Construction Law Section, November 2007
"Motion Practice," Arizona Association of Defense Counsel, November 2004 and 2005

"The Economic Loss Rule and Its Application to Arizona Construction Defect Claims," State Bar of Arizona Construction Law Section, September 2006

"Litigation Basics for the Civil Defense Associate," AADC Young Lawyers Division, November 2005

"A Sophisticated Guide to Proving Damages for Arizona Paralegals," National Business Institute, December 2004

"Case Study of a Trucking Accident," Arizona Claims Association, November 2004

"Litigation Basics for the Civil Defense Associate," AADC Young Lawyers Division, November 2004

"Current Trends in Arizona Auto Law," National Business Institute, September 2003

"Trying the Automobile Accident Case in Arizona," National Business Institute, December 2002

"Construction Defect Litigation," Arizona Society of CPAs and Construction Industry Conference Task Force, October 2002

"Whoops, I Did It Again ... Construction Site Accident Claims: A Plaintiff and Defense Perspective," State Bar of Arizona, October 2001

"Utilizing, Limiting or Preventing Reconstruction Evidence: Views From the Expert and the Attorney," DRI Young Lawyers Seminar, June 1997

"Fibromyalgia: The Syndrome of the 90s?" Dial Corporation, October 1995

"Liability Issues for Hotel Owners," January 1995

"Premises Liability," Fry's Food Stores and CNA Insurance Company, 1994

Various presentations to local contracting organizations and individual companies regarding construction defect litigation

TRIAL EXPERIENCE: PLAINTIFF AND DEFENSE

Chuck Onofry has tried cases in a wide variety of areas including abuse of process, assault and battery, automobile accidents (both plaintiff and defense), bad faith, business divorce, commercial torts, construction defects, contract disputes, conversion, defamation/slander, copyright infringement, employment disagreements, fiduciary duty claims, HOA disputes, insurance coverage, intentional torts, negligent counseling, negligent transmission of STD, nursing home malpractice, non-competition agreements, premises liability, professional negligence, property line disputes, restrictive covenants, stockholder share valuation, testamentary capacity, trespass, trucking collisions (multiple defense verdicts), trust and estate disputes, undue influence, and unfair competition claims.

BUSINESS DISPUTES

- After a five-day trial, obtained a defense verdict on a \$12.9 million claim that an LLC operating agreement created a personal guarantee of the plaintiff's real estate investment loans and that the defendant acted in bad faith in failing to

make member loans to keep the LLCs afloat until plaintiff's loans could be repaid.

- Obtained a \$250,000 jury verdict for a former shareholder of architectural partnership for the value of his minority partnership interest.

CONSTRUCTION

- Represented local block wall and drywall contractors in a six-week construction defect trial.
- Successfully defended a roofing company in an indemnity claim made by a general contractor.

DRAM SHOP LIABILITY

- Representation of a bar in a dram shop/wrongful death matter involving overserving, which resulted in a single vehicle accident that caused the death of one person and catastrophic injuries to another.
- Defense of a bar sued for dram shop/wrongful death of someone who was run over in the parking lot and killed.
- Summary judgment in favor of bar where the allegedly intoxicated driver had been successfully taken home but who later left and caused a fatal collision.
- Defense of a bar sued for the death of an individual who stepped out in front of a car being driven by a patron of the bar.
- Defense of a Phoenix bar accused of overserving an underage patron who later rolled her vehicle, was ejected during the impact, and sustained significant injuries to her back and ankles.
- Defense of a bar sued for the wrongful deaths of three individuals who were struck by a drunk driver.
- Defense of a bar sued on a dram shop matter involving a vehicle running a red light hitting a motorcycle, which caused catastrophic injury.
- Defense of a bar sued in a dram shop matter sued by a motorcyclist who suffered catastrophic injuries after being struck by a drunk driver on a freeway.
- Representation of a Tucson bar in a wrongful death action where a bar patron (driving under the influence) struck and killed a woman who was standing in a roadway median.
- Representation of a Phoenix bar sued for the wrongful death of an elderly woman who was struck and killed by a bar patron while crossing the street.
- Defense of a Phoenix bar whose patron ran a red light and struck a vehicle carrying a family of three. The mother died at the scene, the father was comatose, and infant child suffered a broken leg.
- Defense of a Tucson bar against allegations of overserving a minor, where after leaving the bar, patrons gathered at a

nearby restaurant and became involved in an altercation that resulted in the deaths of two people.

- Defense of a Phoenix bar in a wrongful death action brought by the surviving children of the occupants of a vehicle that was struck by a bar patron's truck while he drove drunk. Two women died at the scene, and the sole passenger remains in a vegetative state.
- Defense of a Tucson bar sued by the surviving mother of a bar patron who was shot and killed by another person while leaving the property.

EMPLOYMENT LITIGATION

- Successfully defended a woman sued for tortious interference, theft and defamation by a former lover when she left the lover's employment and joined a competing local trucking company.
- Obtained defense verdict for an orthopedic surgeon sued by a former employee for an alleged breach of employment agreement.
- Obtained a defense verdict for an employee who left an architectural firm to join a competing firm and was accused of theft, conspiracy, and tortious interference of contractual relations.

INTELLECTUAL PROPERTY LITIGATION

- Successfully defended an architect and his architectural firm in a lawsuit alleging federal copyright violation when it prepared plans for a regional grocery chain.

GENERAL CIVIL LITIGATION

- Obtained an award for the family of a pastor who was defamed by a local church group leader who wrongfully convinced the plaintiff's daughter that her father had molested her.
- Represented a large farming group that suffered crop loss after a nearby levy failed due to structural damage caused by an uncontrolled gopher population of nearby farm.
- Defended a homeowner against claims that he illegally converted water from a local water company for use in his pond.
- Defended a national equipment supplier in \$5 million fire subrogation loss.
- Obtained an award for the family of a pastor who was defamed by a church leader, who wrongfully convinced the pastor's daughter that her father had molested her.
- Obtained a \$1.3 million jury award for wrongful denial of life insurance proceeds to a widow.
- Prevailed in the defense of a homeowner sued by his neighbor for intentional trespass and invasion of privacy.

MOTOR VEHICLE LIABILITY

- Obtained an \$11 million jury award against a local municipality in a roadway design case that caused the wrongful death of a man survived by his 5-year-old son.
- Defense of a company and its employee who were sued for wrongful death following a motor vehicle accident.
- Defense of an individual sued for the death of a pedestrian struck and killed by a motor vehicle.
- Defense of a trucking company whose driver rear-ended two vehicles, killing one occupant and seriously injuring the others.
- Representation of a trucking company sued for negligently passing a vehicle that turned left in front of the truck. The driver of the vehicle suffered debilitating injuries.
- Defense of a truck driver who ran a stop sign and killed a mother of three children.
- Representation of a trucking company whose driver rear-ended a motorcycle with a side-car carrying a father and his two children while driving on the freeway. All occupants survived; however, the father suffered extensive injuries.
- Defense of a trucking company who was sued after its driver's passenger was struck by oncoming traffic while inspecting the truck's rear doors. The passenger was pinned against the semi-truck causing injuries to his lower extremities.

PREMISES LIABILITY, INCLUDING NEGLIGENT SECURITY AND CONSTRUCTION SITE CLAIMS

- Obtained a defense verdict in a premises liability claim against a national hotel chain by a plaintiff who was injured when he walked into a plate glass window.
- Defense of a school district sued for a slip-and-fall for which the plaintiff sought \$300,000 for injuries.
- Defense of an apartment complex sued for premises liability when a woman was bit by a feral cat, causing numerous injuries.
- Representation of an individual sued for premises liability and catastrophic injuries when a woman dove into an extremely shallow pool.
- Defended a corporation sued for premises liability and wrongful death of a person shot to death in their parking lot.
- Representation of an apartment complex sued for premises liability and wrongful death of a tenant found dead in his apartment, allegedly due to the spraying of bugs.
- Defense of an apartment complex sued for catastrophic injuries by an individual who was working on the roof when he was allegedly blown 30 feet to the ground below.
- Representation of a subcontractor who was sued when an individual fell 25 feet through a partially cut opening for a

skylight to the concrete below.

- Defense of an entity sued for negligent supervision and training when an employee was electrocuted and suffered catastrophic injuries.
- Defense of a wrongful death claim brought by the parents of a passenger in a vehicle that slammed into a piece of heavy equipment at a construction site. Parents claimed the equipment was not properly parked at the site.
- Representation of a tree-trimming service sued for premises liability when an employee entered the property with his girlfriend, sat with her on a wood chipper, and attempted to push the two of them through. The girlfriend survived.
- Representation of an apartment complex sued for negligent security after a resident's child was molested.
- Defense of a lumber yard worker sued for the wrongful death of young boy who was killed while playing on a forklift.
- Representation of a county association sued for the debilitating injuries suffered by a jockey who was thrown from a horse and trampled during a county fair event.

PRODUCTS LIABILITY, INCLUDING DESIGN AND MANUFACTURING DEFECT CLAIMS

- Represented a national coffeemaker manufacturer in a \$2 million fire subrogation claim.
- Represented a school teacher who suffered a serious hand injury caused by an exploding vase at an employer-sponsored Christmas party.
- Defense of a corporation sued when one of its exercise machines allegedly malfunctioned throwing a facility member from the equipment.
- Defense of a car dealership against allegations of an improperly designed or maintained car part, where the failure of the part resulted in a fatal accident.

PROFESSIONAL NEGLIGENCE

- Representation of a truss manufacturer against allegations of truss defects and improper design where a truss failed, resulting in the collapse of a warehouse roof.
- Representation of an architect against allegations of improper design of an air conditioning and heating system that resulted in carbon monoxide poisoning and the death of a hotel occupant.

TRUCKING

- Obtained a defense verdict for a regional trucking company and driver sued for the alleged wrongful death of a pedestrian struck in the middle of a roadway.
- Obtained a defense verdict for long-haul truck driver who was unable to control his truck under icy road conditions and rear-ended the plaintiffs' vehicle.

- Obtained a defense verdict for a long-distance trucking company sued for plaintiff's injuries allegedly caused by the truck driver not timely placing warning devices after he pulled to the side of a roadway.
- Defense of a trucking company that was sued for wrongful death of a "Good Samaritan" who stopped to help another vehicle involved in an accident.
- Defense of a trucking company sued for the wrongful death of a driver due to a dolly allegedly falling out of the trailer onto the roadway, causing the driver to swerve and collide with another tractor trailer.
- Defense verdict in favor of trucking company whose driver rear-ended an elderly couple on a highway during icy conditions and then fled the scene.
- Defense verdict in favor of trucking company in an amputation case claiming that the trucker made an unsafe stop in the roadway.
- Defense verdict in favor of trucking company which was alleged to have created dangerous condition at truck stop and allegedly struck plaintiff walking in the parking lot.

TRUST AND ESTATE LITIGATION

- Defended a surviving spouse who was accused by the surviving children of her deceased husband of financially exploiting him as he progressively died from Lou Gehrig's disease.
- Defended the sole beneficiary of a trust from claims by his sister that she was excluded as a beneficiary due to her brother's undue influence and mother's lack of testamentary capacity.

APPEALS IN FEDERAL AND STATE COURTS

- *Allen v. Shamrock Foods Co.*, 1CA-CV 04-0256 (3/31/2005) Arizona Court of Appeals, Division One: Jury verdict in favor of truck driver affirmed in wrongful death case
- *Anderson v. Graham Bros. et al.*, 1 CA-CV 09-0254 (8/26/2010), 2010 W L 3366656: Summary judgment in favor of bar affirmed in dram shop action
- *Arellano v. Primerica Life Ins. Co.*, 235 Ariz. 371, 332 P.3d 597 (App. 2014): Breach of contract and bad faith verdict upheld against life insurance company; punitive damages based on evidence of reprehensibility upheld, but reduced in scope
- *Baron v. Dillard*, 1 CA-CV 14-0171 (1/5/2016) 2016 WL 54832: Affirmed trial court's dismissal of plaintiff's complaint with prejudice based on plaintiff's repeated failure to comply with discovery requests
- *Brimley v. Jirauch*, 1-CA-CV 17-0507 (12/27/2018): Affirmed trial court's grant of summary judgment on a breach of real estate contract and affirmed trial court's award of damages, attorneys' fees, and costs

- *Campbell v. Anderson*, No. CA-CV 94-0469
- *Cervantes v. Superior Court*, No. 2 CA-SA 96-0031, Arizona Court of Appeals, Division Two
- *Dean/Connelly v. Jack in the Box, Foothills Shopping Center, and Zell Commercial Real Estate Services, Inc.* (1 CA-CV 04-1274 and 1 CA-CV 04-0282
- *Decola v. Freyer*, 198 Ariz. 28, 6 P.3d 333 (App. 2000)
- *Dilger v. Conrail* - U.S. Court of Appeals for Second Circuit
- *Evans Withycombe, Inc. v. Western Innovations, Inc.*, 215 Ariz. 237, 159 P.3d 547 (App. 2006);
- *Fulton Homes Corp. v. BBP Concrete*, 214 Ariz. 566, 155 P.3d 1090 (App. 2007): Attorneys' fee awards to subcontractors affirmed where the evidence supported a determination that the general contractor's third-party complaint against the subcontractors was not warranted
- *Hahne v. AZ Air Time, LLC*, 1 CA-CV 14-05 Security Pest & Termite Sys. of S. Ariz. v. Reyelts, 1 CA-CV 16-0624 (12/7/2017): Obtained reversal of trial court's grant of preliminary injunction on issues of non-competition and non-solicitation
- *Hines v. Southern Arizona York Contracting Company*, No. 2CA-CV 94-0020, Arizona Court of Appeals, Division Two
- *Hutchison v. American Family Mut. Ins. Co.*, 1 CA-CV 14-0606 (10/29/2015), 2015 WL 6696583: Obtained reversal of judgment dismissing plaintiff's bad faith claim
- *Kaufman v. Fulton*, No. 1 CA-CV 95-0052, Arizona Court of Appeals, Division One
- *Kieren v. Waste Management Corporation*, No. 2 CA-CV 95-0126, Arizona Court of Appeals and Petition for Review to Arizona Supreme Court
- *MT Builders, LLC v. Fisher Roofing, Inc.*, 219 Ariz. 297, 197 P.3d 758 (App. 2008): Summary judgment against subcontractor reversed where subcontractor's indemnity provision required general contract to prove subcontractor's fault in that indemnity was owed only to the extent caused in whole or in part by the subcontractor's negligence
- *Mirage Homes, L.L.C. v. Headlee Roofing Company, Inc.* (2 CA-CV 2005-0215; decided 9/21/2006)
- *Rivera v. Superior Court*, No. SA 95-248, Arizona Court of Appeals, Division One
- *Preciado v. Young America Insurance Company*, 1 CA-CV 16-0082 (6/29/2017): Prevailed before the Arizona Court of Appeals in getting a \$750,000 punitive damage award vacated in its entirety
- *Robert Kubicek Architects & Associates, Inc. v. Bosley, et al.*, 9th Cir. Ct. App. No. 14-15792 (3/11/2016): Affirmed jury verdict in favor of competing architect who left prior firm on claims of copyright violation

- *Robert Kubicek Architects & Associates, Inc. v. Bosley*, 1 CA-CV 11-0416 (12/20/2012), 2012 WL 6673954: Grant of new trial in favor of minority shareholder in business dispute affirmed; grant of minority shareholders' directed verdicts against plaintiff's claims affirmed
- *Ruckdashel v. Superior Court*, No. SA95-237, Arizona Court of Appeals, Division One
- *Sandigo v. Bill Alexander Ford v. Casa Ford*, 187 Ariz. 616, 931 P.2d 1126 (App. 1996)
- *Schrum v. Burlington Northern & Santa Fe Railway Co.*, 9th Cir. Ct. App. No. 06-16135 (7/10/2008): Summary judgment in favor of defendant affirmed in FELA case due to lack of competent evidence on causation
- *Security Pest & Termite Sys. of S. Ariz. v. Reyelts*, 1 CA-CV 16-0624 (12/7/2017): Obtained reversal of trial court's grant of preliminary injunction on issues of non-competition and non-solicitation
- *Security Pest & Termite System of Southern Ariz. v. Reyelts*, 1 CA-CV 14-0237 (5/14/2015): Affirmed trial court's denial of injunctive relief based on the failure to show irreparable harm
- *Strawberry Water v. Paulsen*, 220 Ariz. 401, 207 P.3d 654 (App. 2008): Case remanded for retrial of damages based on comparative fault of nonparties
- *Strawberry Water Company v. Paulsens* (1 CA-CV 06-0442)
- *Weatherguard Roofing Co., Inc. v. D.R. Ward Constr. Co., Inc.*, 214 Ariz. 344, 152 P.3d 1227 (App. 2007)
- *Zamalloa v. Ligon Nationwide, Inc.* (Ninth Circuit Court of Appeals) Defense of commercial trucking company in personal injury action involving significant and complicated issues of ICC Trucking liability for leased vehicles; co-counsel trying initial case and briefed matter before the Ninth Circuit Court of Appeals.