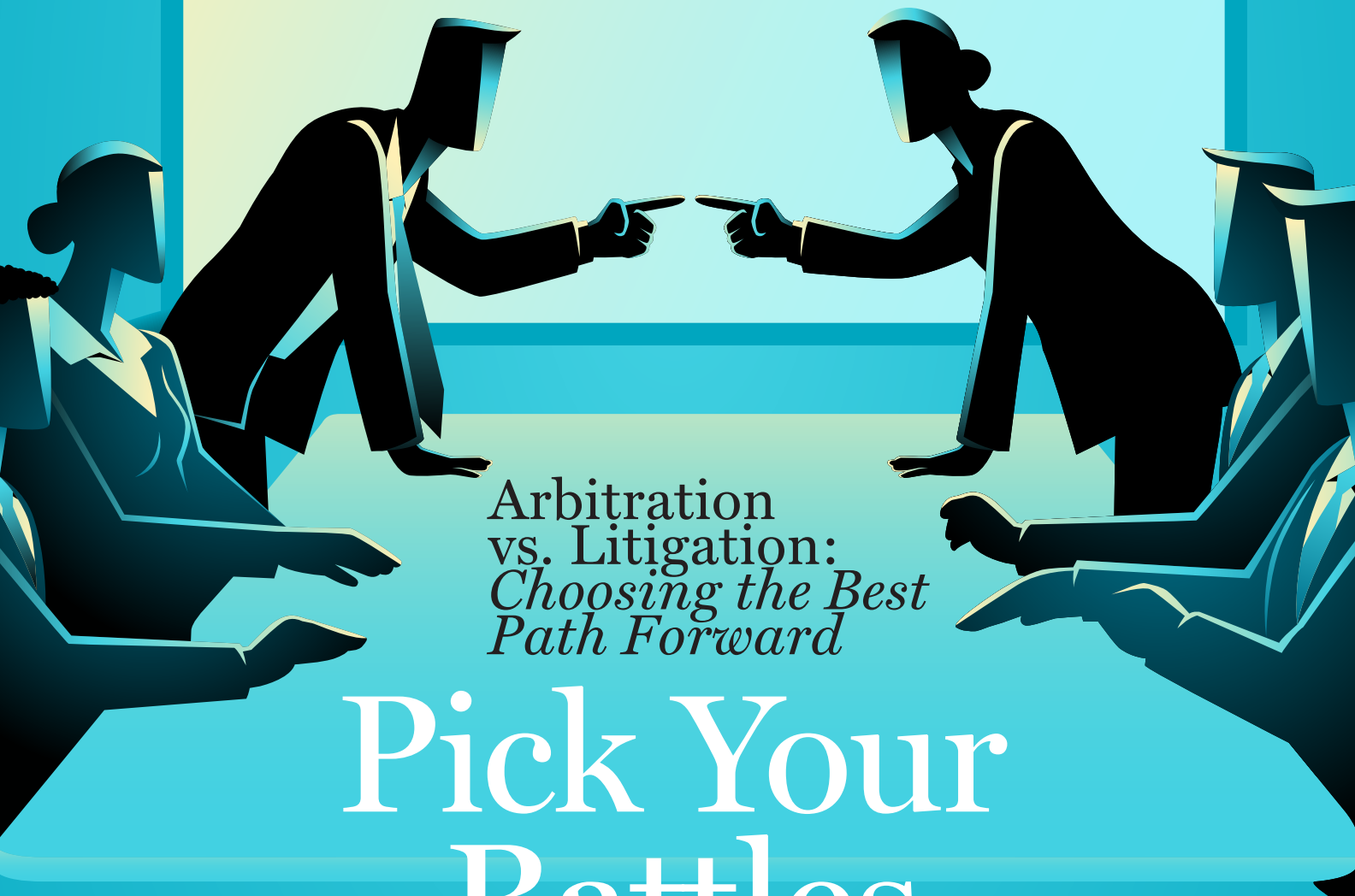


TB  
LAW

NEWSLETTER



Arbitration  
vs. Litigation:  
*Choosing the Best  
Path Forward*

# Pick Your Battles

PAGE 6

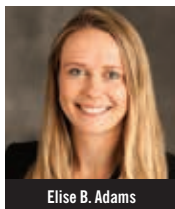
5 Railbanking  
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10 Less Recourse for Creditors  
*Navigating recent changes for  
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# ANNOUNCEMENTS

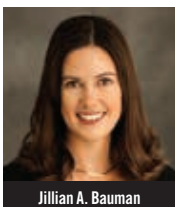
## PROFESSIONAL & PERSONAL ACHIEVEMENT



Elise B. Adams

**ELISE B. ADAMS** presented on the current state of the law of estate creditor claims at the seminar “A Judge, an Accountant, and a Lawyer Walk into a Bar” for the Probate and Trust Section of the State Bar of Arizona.

**JILLIAN A. BAUMAN** was selected as a member of the Steering Committee for the Maricopa County Chapter of the Arizona Women Lawyers Association. She also joined the association's Luncheon Committee.



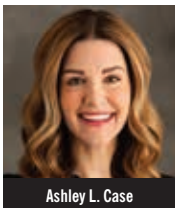
Jillian A. Bauman

**JODI R. BOHR** received recognition from *Az Business* magazine as one of its “AzBusiness Leaders 2023 (Employment & Labor Relations).” Jodi was also elected to the Board of Directors for the Maricopa County Bar Association, her term began December 2022. Jodi had her article “Contesting Unemployment Claims” featured in the *Arizona Attorney* magazine's January 2023 edition.



Jodi R. Bohr

**ASHLEY L. CASE** was recently appointed to Ballet Arizona's Board of Directors.



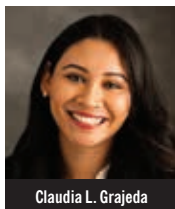
Ashley L. Case

**JAMES A. FASSOLD** delivered the seminar, “Beyond Good and Email,” to the Arizona Bar Leadership Institute and the Probate and Trust Section of the State Bar of Arizona. He also moderated the seminar, “A Judge, an Accountant, and a Lawyer Walk into a Bar” for the P&T Section.



James A. Fassold

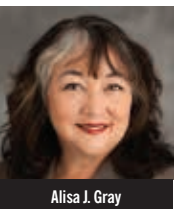
**CLAUDIA L. GRAJEDA** presented “Probate Process 101: Personal Representative, probate shortcut, initiating the



Claudia L. Grajeda

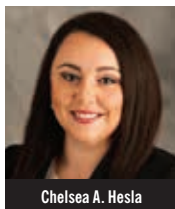
process, and handling creditor claims,” a live seminar, in January 2023 for myLawCLE. She also participated as a volunteer attorney in ABC15 Arizona's “Let Joe Know” live public phone bank, addressing wills and trusts questions.

**ALISA J. GRAY** was recognized in March as a “Woman with Vision” by the National Association of Women Business Owners. She also spoke at the Arizona Fiduciary Association Spring Conference. The non-profit provides structure, guidance, training and continuing education for licensed fiduciaries.



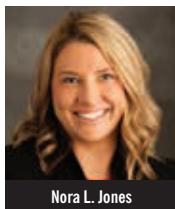
Alisa J. Gray

**CHELSEA A. HESLA** was appointed to The Phoenix Theatre Company's Board of Directors. She also received the “Clients' Choice Award” from Avvo.



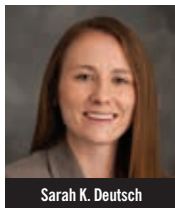
Chelsea A. Hesla

**NORA L. JONES** was featured on ABC15 Arizona to talk about the importance of creating wills, trusts, and powers of attorneys. Nora has become a frequent contributor, offering her expertise and insights on common topics and issues in trusts and estates.

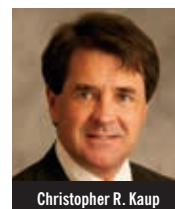


Nora L. Jones

**NORA L. JONES, CHELSEA A. HESLA, VANESSA R. HEIM, and SARAH K. DEUTSCH** were honored to present for the Maricopa County Bar Association and the East Valley Bar Association regarding capacity disputes in estate and trust litigation. Their one-hour CLE addressed capacity standards, best practices for estate planners, and considerations for probate litigators.



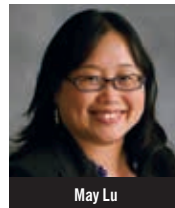
Sarah K. Deutsch



Christopher R. Kaup

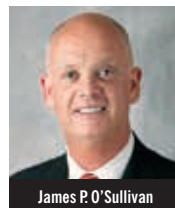
**CHRISTOPHER R. KAUP** spoke as part of a panel presentation at a meeting of the National Society of Certified Healthcare Business Consultants called, “Corporate Break Ups: The Good, the Bad, and the Ugly” and moderated the Economic Forecasting Panel for the Turnaround Management Association.

**MAY LU** spoke on panels at Arizona State University's Sandra Day O'Connor College of Law regarding Women in Transactional Law last November, and regarding non-profit boards in March. She also joined a panel at ASU's Barrett Honors College Inn of Court regarding law school preparation and career experiences. May co-chaired and co-presented “Anatomy of an Operating Agreement” for the State Bar. In April, she co-presented a webinar on “Structuring MOUs, LOIs, Term Sheets, and Other Nonbinding Legal Documents” for Strafford.



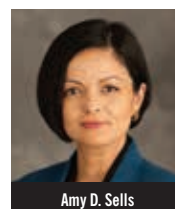
May Lu

**JAMES P. O'SULLIVAN** presented on “Professional, Ethics, & Law Practices Leadership: Lessons Learned ‘OTJ’” in March to the State Bar of Arizona's Bar Leadership Institute. He also co-presented with **MAY LU** in November 2022 to M&A Source the seminar titled “DONE & DONE-ER: Managing Legal Issues for a Successful Closing (and a Happy Ever After!)”.



James P. O'Sullivan

**AMY D. SELLS** chaired and moderated a CLE for the State Bar of Arizona Appellate Practice Section titled “A Judicial Perspective on Effective Appellate Writing” with retired Judge Diane Johnsen on March 16, 2023.



Amy D. Sells

## ANNOUNCEMENTS



**T**his past holiday season, Tiffany & Bosco continued building upon its commitment to the community and helped bring some holiday cheer to three Arizona families. The firm once again partnered with the Jaydie Lynn King Foundation by participating in the Foundation's Adopt-a-Family program for the sixth consecutive year.

The Jaydie Lynn King Foundation creates opportunities for organizations and individuals to participate in programs that help provide comfort, hope and emotional support to children suffering from cancer and other blood disorders, as well as their families. Each year, leading up to the holiday season, the Foundation's Adopt-a-Family program matches organizations with families who have a child in treatment at the Phoenix Children's Hospital's Center for Cancer and Blood Disorders.

The Foundation not only selects the families in need, it also provides a comprehensive list of "wants" and "needs" specifically tailored to each family.

This year, through an outpouring of support from the firm's attorneys and staff, Tiffany & Bosco was able to help three families in the Phoenix area and collected more than 253 gifts for those families! The gifts ranged from everyday necessities such as household goods and clothing to items that would excite any child, such as bicycles and a basketball hoop.

It is opportunities like this that allow Tiffany & Bosco to demonstrate its commitment to helping make our community stronger and better. We thank all of those who participated in this year's Adopt-a-Family program and thank the Jaydie Lynn King Foundation for helping make this past holiday season one we will not soon forget.

### RECOGNITION

## Simply 'The Best'

*The Best Lawyers in America* is a listing of outstanding attorneys who have attained a high degree of peer recognition and professional achievement. As a firm, Tiffany & Bosco earned *The Best Lawyers in America* "Best Law Firm" designation in 2023. Several of our attorneys were also recognized by *Best Lawyers* in 2023:

Jodi R. Bohr (Commercial Litigation; Litigation-Labor and Employment); Mark S. Bosco (Litigation-Banking and Finance; Mortgage Banking Foreclosure Law); David L. Case (Litigation-Trusts and Estates; Tax Law; Trusts and Estates); Enslin Crowe (Bankruptcy and Credit Debtor Rights/Insolvency and Reorganization Law); Sarah K. Deutsch (Commercial Litigation); James A. Fassold (Litigation-Trusts and Estates); Alisa J. Gray (Litigation-Trusts and Estates); Richard G. Himelrick (Litigation-Securities); John A. Hink (Real Estate Law); Christopher R. Kaup (Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law; Litigation-Bankruptcy); Jacob Kiser (Litigation - Real Estate); May Lu (Corporate Law); Robert D. Mitchell (Commercial Litigation; Litigation-Securities); Diane Murray (Litigation-Bankruptcy); Kevin P. Nelson (Litigation - Construction); James P. O'Sullivan (Closely Held Companies and Family Businesses Law); Anthony R. Smith (Mortgage Banking Foreclosure Law); Michael E. Tiffany (Real Estate Law); and Donald M. Wright (Bankruptcy and Credit Debtor Rights/Insolvency and Reorganization Law; Litigation-Bankruptcy).

*The Best Lawyers in America* listed the following attorneys as "Ones to Watch" in 2023:

Chelsea A. Hesla (Real Estate Law) and Elizabeth Loefgren (Real Estate Law).

## Meet our 'Super Lawyers' and 'Rising Stars'

*Super Lawyers*, a listing of outstanding attorneys who have attained a high degree of peer recognition and professional achievement, selected the following shareholders for 2023: Mark S. Bosco (Banking); David L. Case (Estate Planning & Probate); Alisa J. Gray (Estate & Trust Litigation); Christopher R. Kaup (Bankruptcy: Business); Robert D. Mitchell (Securities Litigation); and Robert A. Royal (Business Litigation).

*Super Lawyers*' "Rising Stars" list

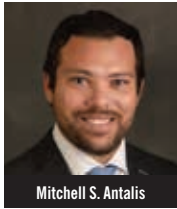
consists of attorneys who are 40 years old or younger or who have practiced law 10 or fewer years. For 2023, the following shareholders and associates were recognized: Elise B. Adams (Estate & Trust Litigation); Timothy C. Bode (General Litigation); Michael F. Bosco (Banking); Joshua T. Chappell (Creditor Debtor Rights); Chelsea A. Hesla (Estate & Trust Litigation); Nora L. Jones (Estate & Trust Litigation); Mina C. O'Boyle (Real Estate); and Michael A. Wrapp (Real Estate).

# ANNOUNCEMENTS

## NEW FACES

## Tiffany & Bosco Welcomes New Attorneys

**MITCHELL S. ANTALIS** joined the firm in September 2022. He practices in the areas of civil and commercial litigation, and specifically business, contract, and real estate

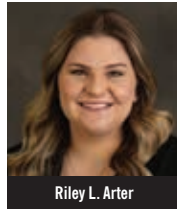


Mitchell S. Antalis

disputes involving individuals and small- to middle-market companies. Mitchell also has a particular focus on appeals. Mitchell is passionate about

technology and got his start in the legal industry as a paralegal working on data privacy and cybersecurity matters. At Tiffany & Bosco, he continues to service that passion through managing and collaborating on complex e-discovery matters. Mitchell received his Juris Doctor from the Sandra Day O'Connor College of Law at Arizona State University. During law school, Mitchell was a Managing Editor for the *Arizona State Law Journal*, an extern for the Honorable Judge Paul J. McMurdie at the Arizona Court of Appeals, Division One, and an extern for the appellate practice division of the Arizona Attorney General's Office. When he is not in the office, you will usually find him golfing, hiking, or weightlifting.

**RILEY L. ARTER** joined the firm in September 2022. Riley's practice focuses on estate planning and trust administration. Prior to joining Tiffany & Bosco, Riley received her law degree from the University of Arizona James E. Rogers College of Law, where she earned certificates in Transactional Business Law and Family Law. While in law school, she served on the editorial board



Riley L. Arter

for the *Journal of Emerging Technologies* and published her note, "Access to Justice and the Elderly: A Look at End-of-

Life Care Planning and Law Tech." In her spare time, Riley likes to play volleyball, attend live concerts, and hang out with her cat, Mila.

**MATTHEW R. HOLT** joined the firm in September 2022. Matt's practice focuses on civil litigation, including business divorce and shareholder disputes. He received his Juris Doctor from the Sandra Day O'Connor College of Law at Arizona State



Matthew R. Holt

University and his undergraduate degree from UC Santa Barbara. Matt has done extensive pro bono work, summering at a Pro Bono

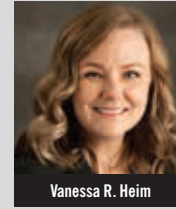
Commission in his hometown, Richmond, Indiana, and he received the High Pro Bono distinction from the Sandra Day O'Connor College of Law. Before joining Tiffany & Bosco, Matt worked in a Major Felony courtroom as a Bailiff. He also worked at a criminal law firm here in the Valley, and as a research intern at Indiana Disability Rights. Matt has a goal to golf in every state, and he also enjoys exploring the Canadian

### { NEED AN ATTORNEY? }

See the directory on the back page of this newsletter or visit us online at [tblaw.com](http://tblaw.com).

## PROMOTIONS

**VANESSA R. HEIM** was promoted to Shareholder at Tiffany & Bosco in October 2022 after joining



Vanessa R. Heim

the firm as an Associate in July 2021. Vanessa practices primarily in the areas of trust and estate plan-

ning, probate administration and litigation, and elder law. Vanessa offers strategic and thoughtful guidance to individuals, families, professional fiduciaries, trustees, personal representatives, creditors, and heirs/beneficiaries. Through her estate planning practice, Vanessa develops custom approaches designed to meet the needs of each individual client, family, or situation. This includes sophisticated planning for more complex matters, practical and efficient plans for more modest estates, and everything in between.

wilderness and writing about the intersection of law and technology.

**KYLE J. KOPINSKI** joined the firm in December 2022. He practices civil, commercial, and real estate litigation. Prior to joining the firm, Kyle first practiced business immigration law, where his main client was a Fortune 100 company. Determined to be a litigator, Kyle then worked at a boutique commercial litigation firm where he represented a wide range of clients in their litigation matters. Kyle received a B.S. in Finance from the University of Arizona and, to divide his own house, a Juris Doctor from the Sandra Day O'Connor College of Law at Arizona State University. During his undergraduate studies, Kyle coached tennis at multiple clubs and resorts in Tucson. He now devotes his free time to either playing golf or trying new restaurants.

## LAND USE

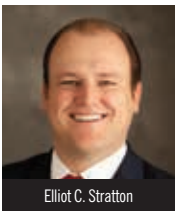


# Railbanking

*Beware of potential  
Fifth Amendment takings*

BY ELLIOT C. STRATTON

When the American West remained largely untamed, and long before Arizona became a state, the United States and private individuals sought to spark expansion westward by subsidizing railroad construction through lavish land grants to private industry. This practice soon fell out of favor, and Congress shifted to granting railroad companies “rights of way” to lay track through public lands. The land affected by these rights of way was protected from fully vesting in the railroad companies through eminent domain or adverse possession, much akin to the way that modern-day easements do not vest fee simple title to property in the parties that they benefit.



Elliot C. Stratton

As the years passed and other forms of transportation developed, the

country’s extensive rail network was utilized less and less often, causing railroad companies to abandon their lines and the “rights of way” they had secured from the government or private individuals. When a line is abandoned, the use of the related land typically reverts back to the fee simple property owner, but because this network of rail may serve national interests in the future, the United States sought to intervene through an amendment to the National Trails System Act (commonly known as the “Rails-to-Trails Act”), which amended the Act to include “railbanking.”

Railbanking consists of a voluntary agreement in which a railroad company allows a trail sponsor (such as a trail organization or government agency) to use an out-of-service rail corridor as a trail until the railroad company may need the corridor for rail service again.

When a railbanking agreement is reached, the use of the subject property

no longer reverts back to the fee simple property owner, and in that circumstance, a Fifth Amendment “taking” arguably occurs, entitling the property owner to just compensation from the United States government. The Fifth Amendment to the United States Constitution provides that the government shall not take private property from private citizens unless the property is taken for a public purpose and just compensation is paid. Railbanking satisfies the first requirement through the creation of public trails, but what landowners often do not know is that they typically must affirmatively bring cases against the United States to receive their compensation. These cases are brought in a special court called the United States Court of Federal Claims, which has exclusive jurisdiction to adjudicate cases brought by private citizens against the United States.

The Court of Federal Claims is a court of national jurisdiction. That means that the Court has jurisdiction over cases originating in all fifty states, and it hears a variety of cases in which private citizens are seeking redress from the federal government. Those cases may involve Fifth Amendment takings, patent infringement, tax issues, and other matters. Such cases against the United States have a six-year statute of limitations, so individuals who seek redress in the Court of Federal Claims must act within that time period or they may lose their right to file suit. Because the Court of Federal Claims is a court of special jurisdiction, many lawyers and private citizens are unaware of its existence, let alone its jurisdictional rules. That lack of awareness often contributes to cases being filed in the wrong court, or other procedural missteps.

### GET ON BOARD

If you need assistance with navigating a potential Fifth Amendment taking, please contact the attorneys at Tiffany & Bosco, P.A.

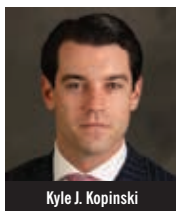
## CONFLICT RESOLUTION

# Pick Your Battles

## Arbitration vs. Litigation: *Choosing the Best Path Forward*

BY KYLE J. KOPINSKI

While the general public is often more familiar with the litigation process, Alternative Dispute Resolution (“ADR”) also offers various avenues by which parties to a potential, or even active, lawsuit may resolve their disagreements outside of the courtroom, i.e., outside of the formal litigation process. One common ADR method is arbitration. While one of the operative terms in ADR is “alternative,” in Arizona, parties are subject to compulsory arbitration if the relief they seek is limited to a money judgment and the amount



Kyle J. Kopinski

sought is not in excess of jurisdictional limits imposed by the superior court of each county, not to exceed a statutory maximum limit of \$65,000. In Maricopa County, for instance, parties are subject to compulsory arbitration if the relief they seek is limited to a money judgment and the amount sought is not in excess of \$50,000.

Accordingly, given the statutory requirements in Arizona, arbitration may be less of an alternative and more of an obligation depending on the amount of monetary damages the parties in question seek.

The litigation process is what most

people are used to seeing on television or in the movies. But most depictions of courtrooms and litigation are inaccurate for a myriad of reasons. In the real world, litigation involves formal pleadings, motions, and extensive discovery, all undertaken in an effort to prevail at trial. These steps require ample time, money, and patience. Parties must complete discovery, which generally involves immense time and effort from both the attorney and client in order to obtain documents, attend depositions, and examine all the evidence, with the goal of determining what may be admissible at trial. Along the way, parties may encounter discovery disputes that result in further



gridlock, and could ultimately require filing motions with the court in order to be resolved. Disputes of this nature may even delay the proposed trial date or various other deadlines within the case. Discovery, however, also may provide useful evidence for the parties, and the production of such evidence may encourage the parties to come to terms with their respective likelihood of success (or lack thereof). As unpleasant as it may be, discovery is where an attorney builds a case and crafts legal arguments in light of the evidence.

During discovery, and sometimes immediately after the discovery deadlines have passed, parties may

file motions arguing why some or all claims should be dismissed prior to trial, or why some evidence should be deemed inadmissible or admissible. Oral arguments on such motions sometimes amount to miniature trials on the most relevant issues in a case. While such motions are useful because they may limit the scope of issues at trial when successful, they remain costly, and still may be unsuccessful, meaning the relevant issues must still be adjudicated at trial.

If a case proceeds to trial, then parties could be subject to a jury trial, as opposed to a bench trial in which the judge determines the outcome of the case. And juries are often unpredictable. Many factors, some of which are completely unrelated to the law or facts, can sway a jury's interpretation of the case. Those factors may even include the physical appearances of the parties and their respective attorneys. Or perhaps a juror may decide who should prevail solely based on the parties' opening statements. Indeed, it is possible that none of the extensive work mentioned above would have any impact on such a juror. The unpredictable nature of a jury often leads to unexpected outcomes which may be very difficult to rationalize. In that circumstance, a party retains a right to appeal. But appeals may ultimately result in the accrual of further attorneys' fees and costs.

Arbitration, conversely, is generally less costly because many of the time-intensive, and thereby expensive, aspects of litigation simply are not part of the arbitration process to the same extent they are required as part of litigation proceedings. For instance, discovery in arbitration is generally quite limited, and sometimes is not even permitted. Depositions may even be disallowed. Subpoenas may be necessary, but limited nonetheless. Generally, the parties are at the behest of the arbitrator to determine the procedural nuances of an arbitration matter. Alternatively, the parties may agree to follow state, federal, or various other procedural rules of arbitration. This determination could be dictated by a prior contract or perhaps a stipulation of the parties. While

limited discovery favors efficiency, it also eschews evidentiary development. Motion practice is generally disfavored within arbitration, leaving the bulk of the arguments, evidence, and factual development for presentation at the arbitration hearing itself.

After working through the limited discovery period, the parties prepare for the arbitration hearing. Prior to the hearing, the parties submit memoranda outlining their respective legal positions, relevant facts, and evidence. Many common legal objections to evidence or testimony, such as hearsay, are not necessarily observed at the hearing. The arbitrator generally errs on the side of considering more evidence and testimony in order to fully understand a case and fashion an appropriate award.

Unlike litigation, in which there is an automatic right to appeal a lower court's decision, arbitration, at least under the Revised Uniform Arbitration Act as adopted in Arizona, provides narrow grounds to appeal an arbitration award. The relevant statutory scheme provides greater finality as compared to the litigation context, but in the event an award is unfavorable, there are comparatively limited grounds for an appeal. Having said that, arbitrators are often seasoned practitioners who understand the issues of a case much more than a jury of one's peers might comprehend them. The potential risks posed by the limited grounds for appealing from an arbitration award are offset by the benefit of having an arbitrator with legal expertise involved in deciding the outcome of the dispute, rather than an unpredictable jury, which could make decisions based on impressions wholly unrelated to the law, facts, or evidence.

Ultimately, litigation and arbitration each have their own respective benefits and pitfalls, and the divide between the two paths only appears to widen over time. Exploring these differences with your attorney will help you determine the best path forward at any stage of a dispute. If you find yourself in need of guidance as to the best path forward, the attorneys at Tiffany & Bosco, P.A. are available to help.

## LEGAL 101



# An Unreasonable Quest

*The true meaning of a groundless & frivolous lawsuit*

BY ROBERT A. ROYAL

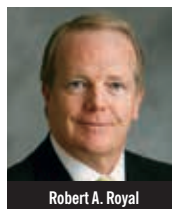
**D**uring the past few years, there has been much news about groundless and frivolous lawsuits, which in some cases may lead to an award of attorneys' fees. Most people who are sued naturally believe that the lawsuit filed against them is groundless, frivolous, or filed with the intent to harass them. But what do those terms mean under the law, and what are the consequences for proceeding with such litigation?

Rule 11 of the *Arizona Rules*

*of Civil Procedure* requires each attorney who files a lawsuit to represent that the claims alleged are supported by facts and law. Likewise,

A.R.S. § 12-349 prohibits the filing of a lawsuit that is baseless, frivolous, or intended to harass. But what does it take to persuade the court that a lawsuit falls within the purview of that statute? Fortunately, Rule 11

and A.R.S. § 12-349, as well as the case law interpreting those rules, provide guidance on how to establish



Robert A. Royal





ILLUSTRATION: SKYPIXEL/DREAMSTIME

that a lawsuit is groundless or frivolous.

By signing a complaint and, essentially, initiating a lawsuit, the attorney filing the complaint on behalf of his or her client is representing to the court that: (1) the lawsuit is not being filed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) the legal contentions alleged therein are warranted by existing law or a logical interpretation of the law; and (3) the facts have evidentiary support or will

likely have evidentiary support after an opportunity to conduct discovery.

When challenged with a potential Rule 11 violation, the court will evaluate whether a reasonably prudent attorney would have initiated the lawsuit under an objective standard of reasonableness. If the court ultimately determines that the attorney knew or should have known that the positions stated in a lawsuit are insubstantial, frivolous or groundless, or otherwise unjustified, Rule 11 provides the court with discretion to punish the attorney who filed the lawsuit. Specifically, the court may sanction the attorney by issuing an order requiring him or her to pay the other parties' expenses and attorneys' fees incurred.

In addition to Rule 11, A.R.S. § 12-349 provides relief when a baseless lawsuit is filed. Under A.R.S. § 12-349, additional sanctions may be ordered if the court determines that a party or its attorney: (1) brings or defends a claim without substantial justification; (2) brings or defends a claim solely or primarily for delay or harassment; (3) unreasonably expands or delays the proceeding; or (4) engages in abusive discovery.

Groundless and frivolous are equivalent terms meaning that the proponent can present no rational argument based upon the facts or law to support the relevant claim or defense. Courts use that definition to focus on whether the claim was brought without justification. Tactics of unreasonable expansion or delay may be found, for example, where there was an intentional failure to disclose the substance of an expert's testimony.

If the court finds that any such factors are present, it must award the other side its reasonable attorneys'

fees and expenses. In addition, the court has discretion to order an award of double damages not to exceed \$5,000. And if the violation implicates ethical violations, the judge presiding over the matter has the power to refer the attorney to the State Bar. Sanctions can be sought against both the attorney and the party who violate these rules of law.

*Groundless and frivolous are equivalent terms meaning that the proponent can present no rational argument based upon the facts or law to support the relevant claim or defense.*

Sanctions awarded against a party asserting a baseless lawsuit are not necessarily the end of the road. If the primary purpose of litigation is an ulterior one not primarily related to a valid claim, then the party who has been sued may also have a separate cause of action for an abuse of process claim. And if the alleged groundless and baseless lawsuit ends with a finding in favor of the party who was sued, that party may have a malicious prosecution claim as well.

In the end, the court applies these standards to make determinations on a case-by-case basis. If you are faced with a claim or lawsuit that you believe falls within any of the definitions discussed above, Tiffany & Bosco can help by aggressively defending such claims and, if appropriate, seeking sanctions.

## FINANCIAL



# Less Recourse for Creditors

*Proposition 209: Recent changes to exemption amounts*

BY DAVID M. BARLOW

Last November, many Arizona voters understandably focused on the major electoral races that garnered national attention. However, Arizona voters also passed a proposition that significantly increased protections afforded to debtors and altered the rights of creditors. That proposition, commonly referred to as Proposition 209, was named the “Healthcare Debt Interest Rate Limit and Debt Collection Exemptions Initiative.” Pre-election media coverage largely focused on the first half of that title—Healthcare Debt Interest Rate Limit—and paid little attention to the latter half of the title—Debt Collection Exemptions Initiative. But unsuspecting creditors should be wary of the changes implied by that latter half because they directly impact a creditor’s ability to collect on a judgment.

Even before Proposition 209, debtors in Arizona already had several protections against creditors seeking to satisfy judgments. Generally, if property is exempt, creditors cannot reach that property to satisfy a judgment. Property exemptions are also utilized in bankruptcy proceedings to achieve the same result—protecting certain assets from being used to satisfy debts. Perhaps the most widely known of these exemptions is the homestead exemption, which protects homeowners from the forced sale of their homes. In 2022, the Arizona Legislature amended Arizona’s exist-

ing homestead statutes and increased the homestead exemption amount from \$150,000 to \$250,000. Within 11 months, Arizonans voted to approve another increase in the homestead exemption amount from \$250,000 to \$400,000.

Proposition 209 similarly increased several other exemptions applicable to Arizona debtors. Specifically, Proposition 209 increased the exemption amounts related to: household goods, furnishings, and electronic devices; equity in a motor vehicle; equity in a motor vehicle if the debtor or the debtor’s dependent is physically disabled; and money held in a personal bank account. Additionally, Proposition 209 provided for annual adjustments to those exemption amounts every January to account for increases in the cost of living. Those statutory annual adjustments will be made based on increases in the consumer price index.

Potential judgment creditors should also take note of changes to Arizona’s wage garnishment statutes brought about by Proposition 209. Prior to Proposition 209, a judgment creditor was allowed to garnish up to 25% of an individual’s disposable income. Now, a judgment creditor is permitted to reach only 10% of an individual’s disposable income.

All of these changes directly impact creditors seeking to utilize the judicial process to satisfy debts. At a minimum, creditors should consider these changes and reevaluate whether the cost of pursuing judgments and seeking to enforce them through, for instance, judicial sales or garnishment proceedings, is truly worthwhile for them in light of the

increased exemption amounts. More proactive creditors should also consider protecting themselves in advance by seeking non-exempt property as security for their loans.

The Arizona Creditors Bar Association and several other pro-creditor entities immediately challenged the constitutionality of Proposition 209. Their lawsuit challenging Proposition 209 was filed on December 5, 2022, the date the changes were set to take effect. The challengers argued that Proposition 209 was unconstitutionally vague and ambiguous, and that it violated the Fourteenth Amendment of the United States Constitution. A Maricopa County Superior Court judge heard oral arguments and opined that “[w]hile the scope of the law is wide-ranging and impacts important and long-standing processes for collecting debts, the language at issue is neither vague nor unintelligible.” As of today, the increased exemption amounts remain in effect.

The challengers appealed the decision of the Maricopa County Superior Court to Division One of the Arizona Court of Appeals. Briefing has not yet concluded, and the Arizona Court of Appeals has yet to set oral argument. Both creditors and debtors, as well as the organizations that advocate for each group, will surely continue to follow the appeal closely.



## READY FOR THE CHANGES?

If you need assistance evaluating your rights and remedies due to the changes brought by Proposition 209, please contact the attorneys at Tiffany & Bosco, P.A.



David M. Barlow

## GOOD WORKS

### Never a Dull Moment

*Tiffany & Bosco continues its longstanding tradition of supporting the Phoenix Open*

As usual, the 2023 Waste Management Phoenix Open featured plenty of excitement in terms of both competition and overall entertainment value. Tickets for the second round on Friday and the third round on Saturday were completely sold out as fans, including those in the Valley for Super Bowl LVII, flocked to the TPC Scottsdale in droves.

On Friday, a streaker disrupted play and swam to the middle of a water hazard, entertaining spectators and grabbing headlines. And on Saturday, Phoenix Suns stars Devin Booker and Chris Paul were among those watching the action at the iconic 16th hole, along with the new majority owner of the franchise, Mat Ishbia.

Meanwhile, Tiffany & Bosco looked on from its skybox near the 18th green, witnessing an exciting tournament, which Scottie Scheffler ultimately won for the second straight year after holding off local favorite Jon Rahm and



Canadian Nick Taylor.

In addition to drawing raucous crowds and providing ample entertainment, the Phoenix Open more importantly generates millions of dollars for charity. And Tiffany & Bosco is honored to be part of that effort through its role as a perennial sponsor of and contributor to the tournament and related events. The firm is proud of its association with the tournament's admirable impact on the community and looks forward to continuing its involvement next year.

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