

thinking

Connecting our Community with Current Issues

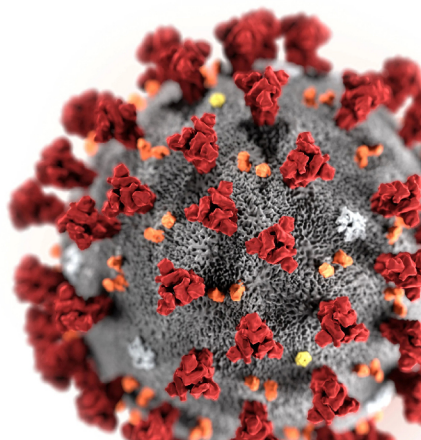


SECURING A \$2.9 MILLION POLICE BRUTALITY SETTLEMENT

*What are frivolous
lawsuits?*



*Covid Litigation -
is it a thing?*



*A Crash Course on Wellness
in the Final Push*



Happenings

Matt Schmidt



Though substantially sidelined in 2020, Matt continues to serve as a board member of the Empower Coalition and founder of the Engage Foundation, two local nonprofits that support local military groups and youth recreation, respectively. Last year, Matt was awarded the AZCLE volunteer of the month by the Arizona State Bar for his substantial involvement in the State Bar's Continuing Legal Education programs. In fact, his seminar "Minding Your Mind During a Difficult Time" was the State Bar's OnDemand best seller.

Peter Akmajian



During the pandemic, Peter has continued to actively support the Arizona Justice Project (Arizona's Innocence Project, assisting the wrongfully convicted) and the Triangle Y Ranch Camp (Summer Camp experience helping disadvantaged kids) as these organizations face the challenges of the Pandemic. Peter also volunteered to be a poll observer on Election Day and was pleased to watch many voters come to the polls and exercise their democratic right to choose their political leaders.

Ted Schmidt



Ted Schmidt has for the 16th consecutive year been recognized in Best Lawyers in America and for the 14th consecutive year a Super Lawyer. Super Lawyers has further recognized Ted as one of the top 50 lawyers in all of Arizona. Ted has just been reappointed as a Judge Pro Tem to the Pima County Superior Court and an Adjunct Professor at the University of Arizona College of Law teaching Advanced Trial Advocacy.

Dev Sethi



We are dedicated to providing the strongest representation for our clients in a wide range of cases involving serious injury or death. We are grateful for the opportunity to work with referring lawyers from Arizona and around the country. We appreciate the trust those lawyers have in allowing us to assist their clients. We welcome the chance to talk. If you have a case to discuss or simply want to know more about us, please visit our website.



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Schmidt, Sethi & Akmajian Secure \$2.9 Million Settlement in Police Brutality Case

Schmidt, Sethi & Akmajian were pleased to bring two year old Sophie Ingram's-Lopez claims against the City of Tucson to a successful conclusion four months from being retained on the case, after developing solid evidence that Sophie's dad died an extended, painful and wrongful death at the hands of police officers ignoring their training and protocols.

Additionally, we retained leading toxicologist Dr. Steven Pike, on staff at several medical facilities in New Mexico, who issued a report establishing that this wrongful death was indeed caused by the police and not a preexisting heart condition or cocaine.

At the same time we were able to secure the report of Dr. Michael Sucher, President of Nevada Professional Assistance Program, Acting Medical Director of EMT/Substance abuse issues in the Department of Health Services in the State of Arizona, and Medical Director of the



Member Assistance Program in the State Bar of Arizona, stating had Adrian not been killed by the police, he was

an excellent candidate for rehabilitation because of his motivation, family support and new job. Dr. Sucher likewise established it was not cocaine that killed Adrian but rather police brutality.

With Lorna Soroko's help we put together a powerful damage witness interview and photo montage and videotaped our psychologist Dr. Erin Neslon regarding the psychological damage to Sophie. Dr. Daniel Scheitrum wrote the economist report to support our claims.

The case we built and the City's own investigation supported immediate settlement, and the parties agreed to early mediation before retired Judge Lina Rodriguez. The City ultimately did the right thing, agreeing to a \$2.9 Million settlement.

National Highway Traffic Safety Administration Launches SaferCar App

Ted Schmidt

In 2019 there were 38,800 traffic deaths in the United States. Automakers continue in their efforts to make our cars and trucks safer but in the process, vehicles become more complex and subject to defects. In fact, there were 53 million cars, car seats, tires and equipment recalls issued in 2019 alone.

Communication to the consumer regarding these issues takes time and does not always reach all car owners, particularly when the original purchaser sells the car to another individual. In fact, one in four vehicles on the road today are being operated with unrepaired recalls.

The National Highway Traffic Safety Administration [NHTSA] is the federal agency responsible for overseeing the safety of our vehicles and has just created an App to improve communication to consumers

not only with regard to recalls, but also investigations of possible defects and complaints registered concerning their cars or trucks. The App will also tell consumers of local dealers who will make repairs for free. With the SaferCar app, you can also access our online tools, such as:

- NHTSA's 5-Star Safety Ratings,
- Car seat finder,
- Car seat inspection, and
- Report a safety problem.

You can download the App for free through Google Play or the Apple App Store. There you can easily download information concerning your vehicles so NHTSA can assure you are timely informed of concerns that might develop concerning those vehicles. Many of us feel we have more Apps than we can keep track of, but we at Schmidt, Sethi & Akmajian feel like this is one we should all have on our phones. -TS

Scan here to visit
the AZ Daily Star's Article- "City reaches settlement
with family of man who died in Tucson police custody"
or navigate to bit.ly/AZ-Daily-Star



What are Frivolous Lawsuits?

Peter Akmajian

Over the years, some in the media and politics have complained about “frivolous” lawsuits. Typically, these critics claim that personal injury and medical malpractice cases are “out of control”. They have advocated “tort reform” and damages caps to curb what they see as groundless litigation.

Since the November 2020 election, we have seen dozens of lawsuits brought and quickly dismissed by courts across the country. When those cases have been appealed, the appeals also are denied, sometimes with blistering opinions or curtly worded orders. Over 80 judges nationwide have heard and quickly dismissed these election lawsuits.

All of this raises the question: Are these lawsuits frivolous? And what is a frivolous lawsuit anyway?

The Rules of Civil Procedure that govern most non-criminal law cases in our courts as well as other ethical rules and statutes tell us that a frivolous lawsuit is one lacking any factual or legal basis and/or one brought for some improper purpose such as to harass or to delay. First, a word on what this firm does when vetting a case. We investigate cases that come to our attention by interviewing witnesses, by gathering and examining documentary and tangible evidence and by analyzing the law. We bring a case only when we are satisfied that it is both factually and legally meritorious.

Under the law, when a lawyer files a lawsuit, he or

she certifies that the suit is brought for no improper purpose such as to harass or delay, that the claims are supported by law and that the facts alleged are supported by evidence. If any lawyer brings suit in violation of these

principles, he or she may face serious sanctions.

When it comes to medical malpractice cases, Arizona law requires such cases be supported by expert testimony, and early in the litigation we are required to submit expert affidavits in support of any case we bring. We do not bring any medical malpractice case without such expert support.

Furthermore, when a party alleges fraud, our rules require that such allegations be stated in the lawsuit “with particularity the circumstances constituting fraud...” In other words, it’s not enough just to say there was fraud; the specifics have to be spelled out.

Thus, when you see that a lawsuit is brought and quickly dismissed, it generally means the case lacked adequate factual or legal support. The recent election cases fall into this category. The various claims were unsupportable, and this is what the courts determined.

Certainly, any time a trial court dismisses a case, the aggrieved party may appeal. But during this extended post-election season, we’ve seen numerous appellate courts, including the U.S. Supreme Court, quickly and decisively reject appeals. The Supreme Court also quickly dismissed a lawsuit brought directly in that Court by the State of Texas.

Thus, for anyone wondering, this recent spate of election litigation perfectly fits the definition of frivolous lawsuits.-PA

If any lawyer brings suit in violation of these principles, he or she may face serious sanctions.

California to Vote - Again - on Damages Caps (but not till 2022)

Peter Akmajian

Ever since 1975, California has had a cap of \$250,000 for non-economic damages in medical malpractice cases. In 2014, a referendum went to the voters to raise the cap and to make other reforms. After a hotly contested and stunningly expensive campaign, the initiative failed. The cap stayed in place.

The current cap has never been adjusted for inflation, and it is now worth 80% less than it was when

originally enacted—some \$50,000 in 1975 dollars.

This year, sufficient signatures were again garnered to put the measure back on the ballot. However, due to the pandemic, the vote will not take place until November of 2022. It is sure to be another epic battle with special interests spending tens of millions of dollars.

This newest proposal is simpler than the 2014 proposal, which included provisions requiring drug-testing for doctors as well as background checks for patients and prescription drug history before prescribing

COVID Litigation - Is It a Thing?

Peter Akmajian

As Congress debates the latest COVID relief bill, one sticking point has been liability immunity for businesses facing possible lawsuits related to the pandemic. The latest version of the proposed liability immunity provides that employers would not be liable under federal employment law for COVID-19 exposure if the employer was trying to conform to public health standards and guidance. Companies would be liable only in cases of “gross negligence”.

The stated concern by proponents of such liability protection is that plaintiffs’ lawyers will take advantage of the pandemic to unjustly sue businesses. Senator Mitch McConnell pointedly stated about his Democratic colleagues that “we all know...they are almost like a wholly owned subsidiary of the plaintiffs’ bar, so any kind of liability relief, they instinctively like a Pavlovian response object to.” (“The Hill” December 9, 2020)

But what is going on in the real world? Has there been a flood of litigation over COVID? According to several websites tracking COVID-19 cases, there have been up to some 221 cases filed nationwide mainly alleging workplace safety problems due to COVID. This is hardly excessive.

Some employees have sued over safe working conditions. In one case in New York, the court denied a nursing union request for an injunction to require certain

protective measures. The court ruled that such an injunction “would unduly interfere with the hospital’s ability to make business decisions at a time when...judicial interference could be particularly

problematic.”

However, a court in California ruled that an employee who quit over COVID-related working conditions at a prison was constructively discharged—meaning she had no reasonable choice but to terminate her job.

In the meantime, Tyson Foods is facing a spate of lawsuits over working conditions at its processing plants. In fact, in one case, Tyson managers were accused of running a betting pool on how many employees would get infected.

***Tyson managers were
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would get infected***

Tyson is fighting these cases and has filed motions to dismiss asserting that such claims are prohibited by workers’ compensation laws and even due to “federal pre-emption” based on President Trump’s executive order that meat processing plants stay open.

The family of a grocery store employee who died in Florida sued Publix, accusing the company of prohibiting their loved one from wearing a mask and causing his death from COVID. However, that case faces difficulties of proving exactly how the worker got COVID, and, as with the Tyson cases, workers’ compensation laws may bar the claim.

Liability immunity creates an exception to the normal rule that one may seek redress for injury from those parties who wrongfully caused the injury. That rule should not be changed based on politics. The current data does not show any liability crisis justifying legal immunity. -PA

certain medicines.

The current proposal would keep a cap in place but tie it to inflation. Thus, the cap would start at approximately \$1.2 million. In addition, this initiative would allow judges and juries to award pain and suffering damages above the cap for certain catastrophic injury cases involving death, permanent impairment, permanent disfigurement, permanent disability or permanent loss of consortium.

Roughly half of the states impose damage caps in medical malpractice cases. Arizona does not. In fact, imbedded in Arizona’s 1912 constitution is a ban on limits one can recover in any personal injury case. In the last 40

years, the insurance industry has twice backed ballot measures to amend the constitution to allow caps. Arizona voters resoundingly defeated both efforts.

The problem with damages caps is they are one size fits all justice and are thus unjust in many instances. Furthermore, a cap like California’s, which is not adjusted for inflation ignores current day realities. For example, under California’s cap, if medical negligence results in the death of a child, the parents are limited to a \$250,000 award. This is simply unfair.

While the latest California proposal maintains a cap, the amount is more reasonable than the current cap, and it provides for flexibility in the most severe cases. -PA

A Crash Course on Wellness in the Final Push

Matt Schmidt

I do not have to elaborate on how tough 2020 was on everyone, a year that would make any Top Ten list of “Years that Challenged the Human Race.” Last year I posted several videos, gave a handful of talks, wrote numerous columns, and provided small tidbits of guidance on strategies to get through this mess. As vaccines begin worldwide distribution and the sun (knock on wood) appears to be surfacing above the horizon, here is crash course on some core concepts you can utilize to continue pushing yourself through this in 2021.



AWARENESS

Our minds focus on what we want them to focus on, either consciously through our attitudes or unconsciously based on our surroundings (i.e. if you have a bad attitude or are surrounded by a bunch of Debbie Downers, your mind will fixate on the negative unless you are mindful of what’s going on). Having a better awareness of our environment helps us identify the good and the bad, so that we can focus on the positives and either ignore the negatives or find a way to flip those negatives into positives.

ACTIVITY: Better awareness involves knowing why you do what you do. Create purpose to everything you do by answering “Why am I doing this?” If you are having trouble providing an answer to that question, then it is worth your time to evaluate the activity, including whether you should devote any more of your valuable time to it.



CONTROL

A primary factor to stress is a feeling out of control, the primary reason COVID scares the heck out of us. Identifying what we have no control over vs. what we do have control over helps us ignore what is out of our hands and increases concentration on what we can fix.

ACTIVITY: Bigger goals (i.e. writing a book, running the marathon) appear insurmountable

unless you break those bigger goals down into smaller tasks. Once you start crossing off smaller task after smaller task, your mind develops a sense of control, the bigger goal suddenly appearing doable.



CHOICES

The mountain of choices we have to make in the modern-day world—and worry over whether we are making the right choices—not only increases our anxiety, but drains our energy.

ACTIVITY: Limit your choices by making them before they have to be made. Schedule tomorrow today. Break up tomorrow’s itinerary into half-hour or hour segments (with small breaks in between) so that the day doesn’t get stale and your mind remains stimulated from one activity to the next.



SOCIALIZATION

We are social beings, so isolation naturally bothers us.

ACTIVITY: Think of something you miss doing with your friends and find a creative, safe, and remote way to replicate it. It is, of course, not the same as being together in person, but there are still ways to continue the happy hours, game nights, movie nights, dinner parties, and book clubs. It’s important to continue being together in some form.



PRESENT ACTION

Right this moment is always the most important time in our lives, yet we are more often than not stuck worrying about something that has already happened or that will/might happen in the future. What we do today, right now, has the most substantial impact in helping us cope with whatever we are worrying about in the past, or shape the best likely outcome for whatever we are worrying about for our future.

ACTIVITY: Write down a list of activities that create depression/stress/anxiety and a list of activities that create feelings of encouragement, creativity, engagement, enlightenment, motivation, and flow. You will discover a couple of things:

1. The “activities” that create worry is primarily the one simple act of thinking, and the worry is primarily over things that have already happened or might happen.

2. The activities that create productivity is primarily the one simple act of doing, and the productivity is primarily over things that are happening right now, in the present. -MS

Fascinated by these topics and want to learn more?

Email Matt Schmidt at

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for questions or thoughts.

The Ongoing Saga of Rule 68 Offers of Judgment

Ted Schmidt

In the beginning, Arizona’s Rule 68—Offers of Judgment—was identical to the federal rule. Only defendants could make an offer and the sanction for failing to accept it, if the ultimate result was a judgment less than the offer, required the plaintiff to pay the defendant’s taxable costs. In 1990 the Arizona Supreme Court amended the rule to allow any party to make an offer and in 1992 added reasonable expert witness fees, double taxable costs and prejudgment interest on unliquidated claims to the sanctions.

In the ensuing decades the rule has caused a great deal of consternation for both litigants and the courts to the point that in 2019 the Arizona State Bar Civil Practice and Procedure Committee proposed the rule be abrogated.

Members of the committee felt that the rule often “leads to unjust results by imposing disproportionately harsh sanctions on litigants and that it does not encourage reasonable settlement behavior but instead encourages settlement through threat of sanctions regardless of the reasonableness of a litigant’s position.” The Arizona Supreme Court rejected this request but in so doing asked the Committee to go back to the drawing board and attempt to “fix” the perceived problems with the rule.

Specifically the court asked the committee to consider “ways to make the rule’s sanctions more proportionate to the offeree’s rejection of an offer or

to the difference between the offer and a lawsuit’s final outcome” as well as giving the court “discretion to reduce or otherwise tailor a sanction if it finds the sanction excessive.” The court also asked the committee to consider eliminating applicability of the rule to injunctive relief and declaratory relief actions and to evaluate whether a different standard should apply when the defendant is a governmental entity. The Committee and Board of Governors struggled mightily to accomplish what the Supreme Court asked, drafted and redrafted new proposals until finally, at the December 2020 Board of Governors meeting a proposal was accepted and sent to the Supreme Court for consideration. This new proposal would:

(i) alter the calculation of the sanction imposed by the rule by making the sanction proportionate to the difference between the amount offered and the judgment, specifically, twenty percent of the difference between the amount of the offer and the amount of the final judgment;

(ii) disallow any sanction if the action seeks solely injunctive relief; and

(iii) allow the court to reduce or eliminate a sanction only if the court finds the sanction to be manifestly unjust.

Sanctions of expert witness fees, prejudgment interest and double the taxable costs, have been eliminated from the proposed amendment to the rule. -TS

It is expected that this proposal will be considered by the Arizona Supreme on January 10, 2021. At that time you can read this and other proposals at <https://www.azcourts.gov/Rules-Forum/afg/41>

If the court is inclined to accept the proposal it will be sent out for public comment and you will be able to comment at the same website until May 1, 2021.



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Our Attorneys:

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*Exclusively representing
individuals in significant
injury and wrongful death
matters.*

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