



DOUGLAS C. NORTHUP

Director

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Doug Northup is an experienced trial attorney in our business litigation practice group whose work focuses on complex commercial business litigation, high-risk tort defense and professional liability litigation. As a business litigation attorney, he represents large corporate clients in a variety of contractual disputes, franchise, and real estate litigation. He also possesses broad experience in premises and security liability cases representing government clients, manufacturers, businesses and other organizations. Doug also handles cases related to the Petroleum Marketing Practices Act (PMPA), and insurance coverage and bad faith matters for policyholders.

As a former police officer who was dedicated to serving his community, Doug's passion for exceptional client service has established him as a mentor for many of our associates; he advocates looking at life from a client's perspective. In any situation, he always puts himself in the position of the audience, which can be the client, or jury, judge or other decision-maker.

Doug's success as a business litigation attorney comes from not only solving problems, but from consistently winning, and his flexibility at managing teams on large, complex cases. Although he assists clients with avoiding and minimizing the risk of litigation through contractual indemnity and limitation of liability clauses and insurance, clients and opposing counsel also know that Doug is always ready to go to trial. This ability to develop complex strategies – thinking like a chess player who is always looking several moves ahead – combined with his experience in picking juries and trying multifaceted cases means that this Phoenix-based litigation attorney is always in demand.

Outside of his work as a business litigation attorney, Doug is at ease in the city – you may find him at a golf course or in one of the valley's fine restaurants. When not in Phoenix, you might find him at his cabin in the White Mountains getting away from it all.

EDUCATION

- J.D., *summa cum laude*, Oklahoma City University School of Law
- B.A., New Mexico State University
- Staff Editor, *Oklahoma City University Law Review*, 1991

AREAS OF PRACTICE

- Business and Personal Injury Torts
- Business Litigation
- Commercial Contingency Litigation
- Commercial Litigation
- Mediation and Arbitration
- Mining Law
- Petroleum Marketing Practices Act Litigation
- Professional Liability

- Insurance Coverage and Bad Faith Representing Insured Policy Holders

REPRESENTATIVE TRANSACTIONS

- Represented the State of Arizona, Arizona Department of Transportation, in a 135 plaintiff mass action seeking 8 figures in damages resulting from flooding that occurred in Mesa, Arizona, along the U.S. 60 freeway. Following a hard fought and complex 3 week jury trial, we obtained a unanimous jury verdict on all of plaintiffs' claims. The jury also unanimously found that we established the "State of the Art" affirmative defense, which would have barred any liability that otherwise might have been established.
- Lead counsel for the State of Arizona in a lawsuit following a catastrophic accident involving a wrong way driver. An impaired wrong way driver drove over 30 miles the wrong way in I-17, ultimately colliding head on with a van. Tragically, three people in the van died and three were catastrophically injured. Plaintiffs sued for multiple millions of dollars alleging that the State, through the Arizona Department of Transportation and Department of Public Service, were negligent in connection with the accident. After significant discovery, the trial court granted the State summary judgment on all claims. The court of appeals affirmed the ruling, partially by a memorandum decision, but also publishing an opinion on the applicability of Arizona's qualified immunity statute to 9-1-1 dispatchers. See *Hariato v. State of Arizona*.
- Represented the Arizona Health Care Cost Containment System and former Arizona Governor Brewer in defending the constitutionality of the 2014 Medicaid restoration legislation. A public interest law group and a group of legislators challenged the constitutionality of the law's hospital assessment, arguing that it was a tax that had not been passed by a required supermajority of the Legislature. We obtained summary judgment at the trial court level, which was affirmed in a unanimous published decision by the Arizona Court of Appeals. The Arizona Supreme Court granted review and affirmed. The Court held the hospital assessment was a "fee," not a "tax" and was legally enacted. The ruling had major implications for Arizona's Medicaid population, as well as the State's budget if the assessment had been declared invalid.
- Defended a national homebuilder in an action tried in Orange County, California. A group of owners alleged our client misrepresented the amount and calculation of homeowners' assessments and committed fraud, breach of contract and violated California unfair business practices statutes and essentially destroyed the value of their homes. We obtained a complete defense verdict on all claims following a 7 day trial.
- Represented State of Arizona in case brought by a public interest group alleging the proposed use of \$50 million from a settlement in the federal mortgage fraud litigation was unconstitutional. The group sought an injunction against the use of the money as directed by state statute. The trial court granted a motion to dismiss the complaint. The public interest group appealed, however, the Arizona Court of Appeals affirmed the dismissal. The Supreme Court denied review and the decision became final.
- Represented a large solid waste company in a dispute over a success fee and royalty. The claimant in arbitration contended it had earned a large success fee and multi-million dollar royalty in connection with a landfill expansion. After a full evidentiary hearing, the arbitrator ruled that the claimant had not established entitlement to either the success fee or royalty and issued an award in favor of our client. The claimant moved the Arizona Superior Court to vacate the award. The court denied the motion to amend and confirmed the arbitration award in our clients favor.
- Obtained a verdict for a large solid waste company in a truck/pedestrian case involving traumatic leg amputation, brain injury and other serious injuries. Full defense verdict following a two week jury trial.
- Successfully represented solid waste company in multi-district class action antitrust cases stemming from purported allocation of territories, monopolization and conspiracy to monopolize.
- Tried complex commercial dispute for a large international cable manufacturer to defense verdict in federal district court. The claims against our client exceeded \$12 million.
- Defended legal malpractice claim arising from an intersection design case to successful verdict. The plaintiff sustained massive injuries in the underlying case for which she sought damages against the firm,

including spastic quadriplegia and brain damage. The jury determined plaintiffs damages were \$26 million, but found for the defendants on liability.

- Successfully defended attorney and law firm who had been sued for fraud arising from a Peaton agreement. Unanimous jury verdict following only 45 minutes of deliberation.
- Obtained a defense verdict from a jury in a legal malpractice case arising out of a doctor's treatment that allegedly caused serious nerve injuries to the plaintiff. Unanimous defense verdict following a 5-1/2 week trial.
- Tried a serious injury truck accident case for a large solid waste company. Received defense verdict following a jury trial.
- Litigated a large injunction case for a large homebuilder. Successfully obtained a temporary and permanent injunction relating to a multi-million dollar letter of credit relating to a land bank transaction.
- Litigated a complicated breach of contract/Petroleum Marketing Practices Act case for a large oil company that related to the company's sale of a franchised station. Obtained summary judgment in federal district court on the franchisee's claims. Our client also received summary judgment on its six figure counterclaim for unpaid fuel and liquidated damages, as well as attorneys' fees.
- Represented a local company that designed and manufactured complex blast initiating equipment for the mining industry. The client had been sued for over \$5 million for terminating a product supply agreement. Following discovery and two days before arbitration hearing commenced, the plaintiff agreed to a walk away settlement with our client.
- Represented a large solid waste company against a national landfill gas producer. The dispute involved a dispute over license fees and royalties from two landfills. Forced multi-million dollar settlement at mediation scheduled shortly before trial.
- Represented a large solid waste company against a landfill gas producer over rights to gas at one of the largest landfills in California. Forced extremely favorable settlement for our client.
- Represented a large wire and cable manufacturer being sued for over \$1 million in commissions. The United States District Court for the Southern District of California granted summary judgment and dismissed plaintiff's claims.
- Represented an elderly couple who had been bilked out of millions of dollars by a financial planner who got the clients involved in a life insurance scheme. Forced the financial planner into a very favorable settlement for our clients.

Published Opinions:

- *Allied Waste North America, Inc. v. Lewis, King, Krieg & Waldrop, P.C., et al*, 93 F. Supp. 3d 835 (M.D. Tenn. 2015), addressing various issues in legal malpractice case, including statute of limitations and ability of defendant to use plaintiffs' failure to settle as defense to liability.
- *Grosvenor Holdings, L.C. v. Figueroa*, 222 Ariz. 588 (App. 2009), reversed trial court ruling that contractual clause requiring challenge to county action proceed under the Administrative Procedures Act was enforceable. The court of appeals held that parties cannot create superior court jurisdiction by contract.
- *Wolfinger v. Cheche, et al*, 206 Ariz. 504, 80 P.3d 783 (App. 2003), which addressed the standard for granting summary judgment in wrongful institution of civil proceedings cases.
- *Bishop v. Pecanic*, 193 Ariz. 524, 975 P.2d 114 (App. 1998), which dealt with offsets under the Uniform Contribution Among Tortfeasors Act.
- *Biggs v. Betlach*, Ariz. Rev. Stat. 36-2901.08(A), which dealt with the provision to fund the costs remaining after federal monies to expand coverage under AHCCCS, as provided for in H.B. 2010.

AWARDS AND HONORS

- *Best Lawyers in America*®, Litigation - Real Estate, 2016-2022
- *Best Lawyers in America*®, Commercial Litigation, 2014-2022
- *Best Lawyers in America*®, Personal Injury Litigation-Defendants, Personal Injury Litigation-Plaintiffs, 2011-2020, 2022

- *Southwest Super Lawyers*®, Business Litigation, 2007-2021
- AZ Business Leader 2020, *AZ Business Magazine*, 2020
- Top 100 Lawyers, *AZ Business Magazine*, 2019
- *Benchmark Litigation*, Local Litigation Star, 2012-2019
- *Chambers USA*, Leading Lawyers for Business, 2004-2007, 2012-2019
- *Southwest Super Lawyers*®, Top 50 Lawyers in Arizona, 2018
- Injury Litigation-Plaintiffs, 2005-2016
- Judge Pro Tempore, Maricopa County Superior Court, 2007-Present
- Recipient, Medal of Valor, Oklahoma City Police Department, 1988
- Best Arizona Attorneys, *Arizona Republic*
- Arizona Top Lawyers, *AZ Business Magazine*
- AV® Preeminent™ Peer Review Rated (the highest rating available), by Martindale-Hubbell

ARTICLES AND PRESENTATIONS

- Co-author, "4 Legal Arguments for Contract Disputes Following Stay at Home Declaration," *Attorney at Law Magazine*, April 10, 2020
- Co-author, "How Might the Government's 'Stay at Home' Declaration Impact Contractual Relationships and Performance Obligations?" Fennemore Client Alert, April 6, 2020
- Co-author, "Business Updates During COVID-19 Pandemic," Fennemore Client Alert, March 25, 2020
- Speaker, "Preparing Your Employees for Deposition," ACC Arizona Chapter Event, June 7, 2018
- Quoted, "Jury Is," *AZ Business*, May 10, 2017
- Quoted, "State Lawyer to Court: Hospital Levy to Expand Medicaid Not a Tax," *Arizona Daily Star*, March 14, 2016

PROFESSIONAL AND COMMUNITY ACTIVITIES

- Member, Maricopa County Bar Association
- Member, Trial Practice Section, American Bar Association
- Member, Trial Practice Section, State Bar of Arizona
- Member, Professional Liability Committee, Defense Research Institute
- Member, Council on Litigation Management
- Former Co-Chair, Commercial Litigation Committee, Council on Litigation Management
- Past President, University Club of Phoenix
- Former Member, Conflict Case Committee, State Bar of Arizona
- Former Member, Board of Directors, Arizona Association of Defense Counsel
- Former Member, Fee Arbitration Committee, State Bar of Arizona

ADMISSIONS

- Arizona
- U.S. District Court, District of Arizona
- U.S. District Court, District of Colorado
- U.S. Court of Appeals, Sixth Circuit
- U.S. Court of Appeals, Ninth Circuit