

# MINUTES

No. 6759

En Banc

*Arizona Supreme Court*  
**Tuesday, November 19, 2019**

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**CR-19-0133-PR**

**STATE OF ARIZONA v MARCUS D NELSON**

(1)

*Court of Appeals, Division One*

*1 CA-CR 18-0788 PRPC*

ORDERED: Petition for Review (of Appellate Court Decision) = DENIED.

Justice Montgomery did not participate in this matter.

**CV-19-0167-PR**

**LAWRENCE SEIDMAN et al v FRANK WEILER et al**

(2)

*Court of Appeals, Division One*

*1 CA-CV 18-0261*

ORDERED: Petition for Review = DENIED.

FURTHER ORDERED: Request for Attorneys' Fees (Appellants Seidman) = DENIED.

FURTHER ORDERED: Request for Attorneys' Fees (Appellees Weiler) = GRANTED.

Justice Beene did not participate in this matter.

**CV-19-0174-PR**

**OKLAND CONSTRUCTION v ZURN INDUSTRIES LLC et al**

(3)

*Court of Appeals, Division One*

*1 CA-CV 18-0249*

ORDERED: Petition for Review of Opinion of Court of Appeals = DENIED.

Chief Justice Brutinel did not participate in this matter.

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**CR-19-0121-PR**      **STATE OF ARIZONA v MARIANNE VISANSKA FOLEY**  
(4)                      *Court of Appeals, Division One*                      *1 CA-CR 17-0804*

ORDERED: Petition for Review = DENIED.

Justice Montgomery did not participate in this matter.

**CR-19-0148-PR**      **STATE OF ARIZONA v THOMAS FORREST BOLTON**  
(5)                      *Court of Appeals, Division One*                      *1 CA-CR 18-0621 PRPC*

ORDERED: Petition for Review = DENIED.

Justice Beene did not participate in this matter.

**CR-19-0276-PR**      **STATE OF ARIZONA v WILLIAM MIXTON**  
(6)                      *Court of Appeals, Division Two*                      *2 CA-CR 17-0217*

ORDERED: The State of Arizona's Petition for Review = GRANTED.

FURTHER ORDERED: Cross-Petition for Review to Arizona Supreme Court = GRANTED as to issue #1 only.

FURTHER ORDERED: The case shall be set for oral argument.

FURTHER ORDERED: The parties may file simultaneous supplemental briefs, not to exceed 20 pages in length, no later than 20 days from the date of the Court's Minute Letter. Any amicus briefs are due on or before December 30, 2019, and any responses to amicus briefs are due on or before January 21, 2020. Any amicus briefs or responses may not exceed 20 pages in length.

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**CV-19-0076-PR**

(7)

**PETE SPAN v MARICOPA COUNTY TREASURER**

*Court of Appeals, Division One*

*1 CA-CV 16-0762*

ORDERED: Petition for Review = DENIED.

FURTHER ORDERED: Request for Attorneys' Fees (Appellant Span) = DENIED.

Justice Beene and Justice Montgomery did not participate in this matter.

**CV-19-0124-PR**

(8)

**MARVIN BRODY et al v POLSINELLI PC**

*Court of Appeals, Division One*

*1 CA-CV 18-0325*

ORDERED: Petition for Review = DENIED.

**CV-19-0163-PR**

(9)

**DONALD W. v DCS/M.D.**

*Court of Appeals, Division One*

*1 CA-JV 18-0322*

ORDERED: Appellee Department of Child Safety's Petition for Review = DENIED.

Chief Justice Brutinel and Justice Beene did not participate in this matter.

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**CV-19-0188-PR**  
(10)

**DIGNITY HEALTH v FARMERS INSURANCE COMPANY**  
*Court of Appeals, Division One*                      *1 CA-CV 18-0292*

ORDERED: Appellee Farmer Insurance Company of Arizona's Petition for Review = DENIED.

FURTHER ORDERED: Request for Attorneys' Fees (Appellee Farmers Insurance Company of Arizona) = DENIED.

FURTHER ORDERED: Request for Attorneys' Fees (Appellant Dignity Health) = DENIED.

Justice Gould voted to grant review.

Justice Beene did not participate in this matter.

**CV-19-0194-PR**  
(11)

**AREK FRESSADI v HON. CHRIS HOLGUIN et al**  
*Court of Appeals, Division Two*                      *2 CA-SA 19-0031*

Separate Order.

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**CV-19-0200-PR**  
(12)

**EPHRAIM DABUSH et al v SEACRET DIRECT LLC et al**  
*Court of Appeals, Division One*                      *1 CA-CV 18-0288*

ORDERED: Ephraim and Rachel Dabush's Petition for Review = GRANTED.

FURTHER ORDERED: Appellee Seacret Direct, LLC's Petition for Review = GRANTED.

FURTHER ORDERED: The issues in both petitions are revised as follows:  
Absent a lease provision to the contrary, does the lessee who exercises actual possession or control over a portion of a property assume a duty of care?

FURTHER ORDERED: The case shall be set for oral argument.

FURTHER ORDERED: The parties may file simultaneous supplemental briefs, not to exceed 20 pages in length, no later than 20 days from the date of the Court's Minute Letter. Any amicus briefs are due on or before December 30, 2019, and any responses to amicus briefs are due on or before January 21, 2020. Any amicus briefs or responses may not exceed 20 pages in length.

Chief Justice Brutinel did not participate in this matter.

**CR-18-0489-PR**  
(13)

**STATE OF ARIZONA v WADE NOLAN CLAY**  
*Court of Appeals, Division One*                      *1 CA-CR 18-0463 PRPC*

ORDERED: Petition for Review of a Decision of the Court of Appeals = CONTINUED.

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**CR-18-0583-PR**  
(14)

**STATE OF ARIZONA v ROGER SCOTT HELM JR**

*Court of Appeals, Division Two*                      2 CA-CR 18-0062 PRPC

***Consolidated with:***

CR-18-0595-PR                      STATE OF ARIZONA v MARTIN RAUL SOTO-FONG

ORDERED: Petition for Review to Arizona Supreme Court = CONTINUED.

Justice Montgomery did not participate in this matter.

**CR-18-0595-PR**  
(15)

**STATE OF ARIZONA v MARTIN RAUL SOTO-FONG**

*Court of Appeals, Division Two*                      2 CA-CR 18-0181 PRPC

***Consolidated with:***

CR-18-0583-PR                      STATE OF ARIZONA v ROGER SCOTT HELM JR

ORDERED: Petition for Review = CONTINUED.

Justice Montgomery did not participate in this matter.

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**CR-19-0132-PR**  
(16)

**STATE OF ARIZONA v BRYAN MITCHELL LIETZAU**

*Court of Appeals, Division Two*                      2 CA-CR 18-0011

ORDERED: Petition for Review to Arizona Supreme Court = GRANTED.

FURTHER ORDERED: The case shall be set for oral argument.

FURTHER ORDERED: The parties may file simultaneous supplemental briefs, not to exceed 20 pages in length, no later than 20 days from the date of the Court's Minute Letter. Any amicus briefs are due on or before December 30, 2019, and any responses to amicus briefs are due on or before January 21, 2020. Any amicus briefs or responses may not exceed 20 pages in length.

**CV-19-0115-PR**  
(17)

**STEVEN GIBSON JR v PAUL J THEUT et al**

*Court of Appeals, Division One*                      1 CA-CV 17-0562

ORDERED: Rick Kilfoy and Rick Kilfoy, PLC's Petition for Review = CONTINUED.

FURTHER ORDERED: Petition for Review = CONTINUED.

FURTHER ORDERED: Petition for Review by Defendants Paul J. Theut; Theut, Theut & Theut, PC; and Maricopa County = CONTINUED.

Justice Gould, Justice Beene and Justice Montgomery did not participate in this matter.

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**CV-19-0128-PR**  
(18)

**CLAUDIA DUFF v HON. LEE/TUCSON POLICE et al**

*Court of Appeals, Division Two*

2 CA-SA 18-0058

ORDERED: Petition for Review of a Special Action Decision of the Court of Appeals = GRANTED.

FURTHER ORDERED: The case shall be set for oral argument.

FURTHER ORDERED: The parties may file simultaneous supplemental briefs, not to exceed 20 pages in length, no later than 20 days from the date of the Court's Minute Letter. Any amicus briefs are due on or before December 30, 2019, and any responses to amicus briefs are due on or before January 21, 2020. Any amicus briefs or responses may not exceed 20 pages in length.



**The foregoing action was taken by the Arizona Supreme Court on Tuesday, November 19, 2019.**

Robert Brutinel

Date: 11/19/19

**Robert Brutinel, Chief Justice**