

## CASE SUMMARY

*Lane v. City of Tempe*  
202 Ariz. 306, 44 P.3d 986 (2002)  
decided April 24, 2002

On April 24, 2002, the Arizona Supreme Court issued a ruling positively impacting all corporations and government entities that find themselves the subject of frequent lawsuits in this state. This letter will summarize that ruling and its effect on the litigation aspect of your business.

## BACKGROUND

The focus of the case of *Lane v. City of Tempe* was Arizona's procedural rules on appeals from arbitration awards. As many of you know, Arizona law requires certain lawsuits\* to be arbitrated before the case may be tried in Superior Court. If a party is not satisfied with the arbitration award, that party has the right to appeal the award, for a trial *de novo* in Superior Court.

According to the *Lane* opinion, the primary purpose of the arbitration process is to reduce "costs and delay associated with litigating smaller controversies" in Arizona courts. Unfortunately, soon after the mandatory arbitration process was created, Arizona courts discovered a loophole that allowed some litigants to unfairly take advantage of the arbitration appeals process by running up the litigation costs of their opponents. What these litigants discovered was that, since there were no consequences to refusing to participate in arbitration, they could simply ignore the entire process, wait for the arbitrator to file a judgment against them, and then appeal the judgment to Superior Court. This strategy caused the party that participated in good faith to incur additional attorneys' fees, thereby increasing the pressure to settle the case at the Superior Court level.

## RULE 74(k) AND ITS UNINTENDED EFFECTS

To eliminate room for abuse, the courts and legislature passed the following rule:

Failure to appear at a hearing or to participate in good faith at a hearing . . . shall constitute a waiver of the right to appeal absent a showing of good cause.

*Ariz.R.Civ.P. Rule 74(k).*

Unfortunately, once Rule 74(k) was passed, it imposed a brand new burden on corporations and government entities. In many lawsuits against corporations and government entities, the employer faces liability solely due to the actions of a single

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\* In Maricopa County, for example, the threshold amount of monetary damages is \$50,000, while in Pima County it is \$25,000.

employee or employees, under the legal doctrine of *respondeat superior*. Since the individual employee is often a person without significant assets, and since the employer often fully indemnifies its employees in such cases, the employee is not as concerned about the potential liability as his or her employer is. Thus, the employer frequently finds itself defending its case in court while the employee, crucial to the defense case, is no longer with the employer, has left the state, or is otherwise out of contact and unable to fully participate in the lawsuit's defense. Prior to the *Lane* ruling, a plaintiff suing an employer in these circumstances could seize upon the opportunity created by Rule 74(k), by obtaining a favorable arbitration award, and claiming that the individual employee was not "participating in good faith" in the arbitration process. If the Superior Court agreed, the employer would effectively lose its right to appeal the award to the Superior Court.

### **THE HOLDING IN LANE V. CITY OF TEMPE**

The Arizona Supreme Court attempted to remedy the problems created by Rule 74(k) with its holding in *Lane*. At issue in the case was a personal injury lawsuit filed by Kiera Lane against the City of Tempe and a city employee, Daniel Serrano. Serrano had allegedly injured Lane in an automobile accident, and the sole basis for liability against the city was the doctrine of *respondeat superior*. The case was referred to mandatory arbitration and set for an arbitration hearing. Prior to the hearing, Serrano appeared for a deposition, and participated in the arbitration through the City of Tempe's lawyer by submitting a disclosure statement and answering interrogatories.

On the date of the arbitration hearing, however, Serrano was no longer employed by the city and did not personally appear at the hearing, even though his attorney had advised him to do so. Serrano's attorney appeared at the hearing. The arbitrator found Serrano 100% liable for the accident and awarded Lane \$16,858 in damages. The City of Tempe appealed this award *de novo* to the Superior Court, on behalf of itself and Serrano. Although the Superior Court allowed the city's appeal on behalf of itself, it dismissed the city's appeal on behalf of Serrano due to his alleged non-appearance at the arbitration hearing. After the Court of Appeals affirmed the Superior Court's ruling, the Supreme Court accepted jurisdiction over the case and reversed.

In so doing, the Supreme Court essentially ruled that the lower courts imposed "unreasonably restrictive" requirements on litigants prior to stripping them of their right to appeal arbitration awards. The Court noted that the requirement in Rule 74(k) that an individual must make an appearance was premised on the legal definition of the word "appearance," rather than the simple dictionary definition:

Appearance, however, is a term of art in the law. Not only can it denote a party being physically present in court, it also refers to '[a] coming into court ... as a lawyer on behalf of a party.' [Lawyers] have been making appearances on behalf of clients from the earliest days of the profession.

The Court went on to rule that “good faith participation” was sufficient to preserve the litigant’s right to appeal, and that whether a litigant’s conduct satisfied that standard was “a matter of fairness and common sense.”

In Serrano’s case, the Court found several factors established his “good faith participation” in the arbitration proceeding. First, he had attended a deposition, answered interrogatories, and participated in the filing of his attorney’s Rule 26.1 disclosure statement. Second, the Court specifically commented that neither party had subpoenaed Serrano or asked for a continuance of the arbitration once Serrano’s absence had become apparent. *Id.* at 989. With the latter observation, the Court appears to have removed part of the burden of establishing “good faith participation” from the absent litigant, and imposed a burden of establishing a *lack* of participation upon the opposing party wishing to remove the absent litigant’s right to appeal.

### **THE EFFECT OF LANE V. CITY OF TEMPE**

The effect on companies and government entities of the Supreme Court’s ruling in *Lane* can be summarized as follows: (1) if an individual-employee of an employer sued in court does not fully cooperate with the defense in an arbitration, the employer does not automatically lose its right to appeal an adverse arbitration award entered against that employee; (2) whether any party has failed to participate in good faith in an arbitration depends on the circumstances of each case and is “a matter of fairness and common sense;” and (3) if the opposing party itself has not taken certain measures to secure the physical appearance of a crucial witness, such as a subpoena or motions to continue a hearing, a court may take that into consideration when deciding whether the right to appeal has been waived.

Broadly speaking, this ruling relieves some of the burden from employers, insurance companies, government agencies and other entities, which depend on the participation of individuals for the efficient defense of lawsuits in Arizona courts. It gives companies, who would have otherwise been unfairly punished for the conduct of uncooperative or unavailable individuals, a better chance at preserving their right to a jury trial in Arizona’s Superior Court system. It also sends a message to litigants who try to unfairly exploit the rules of civil procedure that they, too, share the burden of securing the presence of crucial witnesses in low-value court actions.

If you have any questions about this case or wish to read a copy of the actual opinion, please call [David Bell](#) or [Neil Singh](#).