



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**

**CASE SUMMARY**

**AMERICAN PEPPER SUPPLY CO. v. FEDERAL INSURANCE  
COMPANY, CV-03-0290-PR**

**Parties and Counsel:**

Petitioner: Defendant/appellee Federal Insurance Company, represented by Robert J. Bruno and Mark R. Gilling of Sanders & Parks.

Respondent: Plaintiff/appellant American Pepper, represented by Keith B. Forsyth and Evan S. Goldstein of Herman, Goldstein & Forsyth.

**Facts:**

This is a suit for breach of contract and bad faith by an insured (American Pepper) against the insurer (Federal Insurance, called Chubb in the briefs). American Pepper submitted a theft claim. After lengthy investigation the insurer denied the claim citing the dishonesty exclusion and the concealment and misrepresentation exclusion. The insurer's position was that the items had never been stolen, a position Chubb has maintained through trial and in its petition for review. The trial court granted partial summary judgment to the insurer on the bad faith and related punitive damage claims, and the breach of contract claim went to trial. The jury returned a verdict in favor of American Pepper for \$15,000. The Court of Appeals affirmed the jury verdict in a published opinion and reversed the summary judgment in a memo decision.

The primary issue in the opinion was whether the insurer had burden of proving its defense of concealment and misrepresentation by a preponderance or by clear and convincing evidence. The trial court instructed the jury with a clear and convincing standard. The Court of Appeals approved the clear and convincing standard. In the memo decision, the court ruled that the evidence raised questions of fact whether the claim was fairly debatable and whether the insurer acted unreasonably in investigating and processing the claim.

**Issues:**

- A1. Is an insurer required to establish the contract defense of misrepresentation in a first-party insurance claim by a preponderance of the evidence or the heightened standard of clear and convincing evidence?
2. Should the trial court's summary judgment ruling in favor of Federal on the claim of bad faith be affirmed?@

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