



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**MONICA LIPS v. SCOTTSDALE HEALTHCARE CORPORATION  
CV-09-0273-PR**

**PARTIES AND COUNSEL:**

*Petitioner:* Monica and Walter Lips, represented by Leo R. Beus and Keith C. Ricker, of Beus and Gilbert, PLLC.

*Respondent:* Scottsdale Healthcare Corp., represented by Richard A. Kent and Gordon K. Clevenger, of Kent & Wittekind, PC.

**FACTS:**

In 2004, Monica Lips underwent hip replacement surgery at Scottsdale Healthcare's Osborn facility. During the operation, Dr. Joseph Longo implanted a prosthetic hip system manufactured by Encore Medical Corporation ("Encore"). In 2005, Ms. Lips returned to Dr. Longo to complain about problems with her prosthetic hip. Examination revealed that the implant had failed and that surgery was necessary. Dr Longo removed the damaged implant and replaced it with a new one.

After surgery, the Lipses requested that Dr. Longo maintain and preserve the explanted hip. Following this request, Dr. Longo transferred the explanted hip to Scottsdale Healthcare, informing it that the hip should be preserved. However, Scottsdale Healthcare either negligently or intentionally destroyed or lost the extracted hip prosthesis.

In 2006, the Lipses filed suit against Encore, alleging products liability, negligence and breach of warranty arising from the failure of the original hip prosthesis. Later, the Lipses amended their complaint to allege that Scottsdale Healthcare had "negligently or intentionally lost or otherwise destroyed or disposed of" the remains of the explanted hip prosthesis. The Lipses alleged that destruction of those materials constituted spoliation of evidence that compromised their products liability case against Encore. Scottsdale Healthcare moved to dismiss the Lipses' complaint on the grounds that Arizona courts do not recognize the tort of spoliation of evidence. The trial judge granted the motion and entered judgment for Scottsdale Healthcare. The Lipses timely appealed.

The Court of Appeals defined "spoliation" as "[t]he intentional destruction of evidence . . . . The destruction, or the significant and meaningful alteration of a document or instrument." *Smyser v. City of Peoria*, 215 Ariz. 428, 438 n. 1, 160 P. 3d 1186, 1196 n. 111 (App. 2007) (quoting Black's Law Dictionary 1257 (6<sup>th</sup> Ed. 1990)). Where permitted, a claim for spoliation of evidence may be asserted by one party to an action against the opposing party (first-party spoliation) or against a stranger to the litigation (third-party spoliation), the Appeals Court noted.

The Appeals Court affirmed the trial court's dismissal of the Lipses' claim against Scottsdale Healthcare, stating that, in *La Raia v. Superior Court*, 150 Ariz. 118, 722 P. 2d 286 (1986), the Arizona Supreme Court had declined to adopt a new cause of action for first-party, intentional spoliation, in part in reliance upon the availability of a valid negligence claim under existing Arizona law. The Appeals Court noted that it had never before confronted the questions presented by the Lipses' appeal: Whether Arizona should recognize a claim for either intentional or negligent third-party spoliation of evidence. After analysis, the Court of Appeals declined to adopt either cause of action. This Petition for Review followed.

**ISSUE AS TO WHICH REVIEW HAS BEEN GRANTED:**

“Whether Arizona should recognize intentional and negligent spoliation of evidence by a third party as independent causes of action?”

*This Summary was prepared by the Arizona Supreme Court Staff Attorneys' Office solely for educational purposes. It should not be considered official commentary by the Court or any member thereof or part of any brief, memorandum, or other pleading filed in this case.*