

ARIZONA DOES NOT RECOGNIZE A THIRD-PARTY CLAIM FOR INTENTIONAL OR NEGLIGENT SPOILIATION OF EVIDENCE

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Lips v. Scottsdale Healthcare Corp.
Ct. Appeals, Div. One, August 25, 2009

Authored by the [JSH Appellate Team](#)

Lips underwent hip replacement surgery at Scottsdale Healthcare's facility. The following year, the ceramic liner of the prosthesis failed, necessitating surgical revision. Plaintiff specifically asked the facility to retain the prosthesis for potential litigation, but defendant inadvertently lost or destroyed the explanted portions of the hip prosthesis. Thereafter, Lips filed a products liability suit against the manufacturer of the prosthesis, and a negligent/intentional spoliation claim against Scottsdale Healthcare. She alleged that Scottsdale Healthcare's destruction of the explanted material constituted spoliation of evidence and, as a result, compromised her case against the manufacturer. Scottsdale Healthcare filed a motion to dismiss on the grounds that Arizona does not recognize a cause of action for spoliation of evidence. The motion was granted.

The court of appeals affirmed. Arizona had not yet addressed the issue of third-party actions for spoliation of evidence. Lips urged the Court to adopt jurisprudence from New Mexico and Montana recognizing such a cause of action. The court, however, found that the California case law upon which New Mexico and Montana relied had since been overruled. Moreover, the Court was persuaded by more recent California case law refusing to recognize a cause of action for third-party intentional spoliation. Such claims place an undue burden on litigants, witnesses, and the judicial system in the form of potentially endless litigation over a speculative loss, and create onerous and unreasonable evidence retention policies. The court therefore refused to recognize third-party actions for intentional spoliation of evidence.

The court also refused to recognize a claim for thirdparty negligent spoliation of evidence. This would be anomalous to imposing tort liability on a negligent spoliator while denying liability for the more egregious conduct of an intentional spoliator.