

COURT DECLINES TO RECOGNIZE TORT OF NEGLIGENT THIRD PARTY SPOILIATION OF EVIDENCE

May 3, 2010 | Law Alerts

Lips v. Scottsdale Healthcare Corp.
Ariz. Supreme Court, May 3, 2010

Authored by the [JSH Appellate Team](#)

Spoilation is the destruction or material alteration of evidence. When spoliation is committed by a party to a lawsuit, it is referred to as first-party spoliation; when committed by a non-party, it is called third-party spoliation. In cases of third party spoliation, courts distinguish between negligent and intentional spoliation. Plaintiff had a prosthesis placed in her hip, which failed. Parts of it were removed. Plaintiff believed the prosthesis was defective and asked the surgeon to keep the failed parts. The surgeon in turn told Scottsdale Healthcare (SHC) to keep them. Plaintiff later sued the manufacturer of the prosthesis. During discovery, she learned that the prosthesis parts, which she believed SHC had, could not be found. She amended her complaint to add a claim against SHC for spoliation of the parts.

The court first recognized that there is no spoliation of evidence claim against a party to a lawsuit. Allegations that the defendant spoliated evidence can be addressed through negative evidentiary presumptions and sanctions in the underlying claim. As to third party spoliation, however, here Plaintiff was alleging only economic injury, and tort law does not recognize a duty to another for the purely economic well-being of others. "Liability for negligence [in such cases] . . . must depend upon the existence of some special reasons for finding a duty of care" – such as in fiduciary relationships. Nor did a "limited duty" exist on the ground that Plaintiff asked the surgeon to keep the parts.

With respect to a claim for intentional third party spoliation, every jurisdiction that recognizes a third-party intentional spoliation tort requires specific intent by the defendant to disrupt or injure the plaintiff's lawsuit. Here, although Plaintiff alleged SHC intentionally disposed of the evidence, she did not allege that SHC intended to disrupt her lawsuit, nor did the complaint assert any facts from which such an intent might reasonably be inferred.