

JSH ATTORNEYS WIN SUMMARY JUDGMENT IN DOUBLE DEATH CASE

October 31, 2018 | Case Summaries, News



Johnson & Urbina v. Maricopa County – JSH attorneys [John DiCaro](#) and [Eileen](#)

[GilBride](#) won summary judgment for their clients in a wrongful death case stemming from the death of two painting contractors who were working on the outside of the Lower Buckeye Jail. While there were no witnesses to the accident, the workers apparently had placed an 85-foot aerial lift/bucket vehicle on the slope of a water retention basin (rather than on the flat bottom) so they could get closer to the building. They were in the bucket over 70 feet up power washing the building when the vehicle tipped over. Both workers fell to their deaths. Photographs taken after the accident showed tire marks on the retention basin slope next to the building. Though that particular bucket vehicle had a slope rating of 4 degrees, the slope of the retention basin on which the vehicle was parked was over 25 degrees.

Plaintiffs, the workers' surviving families, sued (among others) Maricopa County and then-Sheriff Arpaio. As against the Sheriff, plaintiffs argued that he was vicariously liable for the actions of the Sheriff's Office employees; but they failed to allege negligence by any employee. As against the County, the complaint alleged that it negligently allowed the lift to be set up on a slope where it "knew or should have known that dangerous and poor soil conditions would adversely affect the vehicle's operation." The theory was that the County had a "non-delegable duty to ensure the premises they own and control are reasonably safe for all individuals." JSH attorneys successfully argued that the decedents' employer – the painting company – was an independent contractor because the County had no control over the details of the painting work; and the County, as landowner, did not owe a non-delegable duty to the employees of an independent contractor. See *Lee v. M and H Enterprises, Inc.*, 237 Ariz. 172, 177 (Ariz. App. 2015). Plaintiffs attempted to get around this law by arguing it as a premises liability case – that a landowner owes a duty to warn invitees of dangers of which the occupier knows or should know and of which the invitee is unaware and unlikely to discover. Plaintiffs argued there was a hidden danger or weakness in the soil that caused the Genie to tip over. But no evidence supported that theory. In fact, the record was undisputed that the ground at the area of the accident consisted of up to 2 inches of gravel over "hard packed dirt." Furthermore, what injured the decedents was not a condition of the land, but their conduct in parking the vehicle on a steep slope.

JSH attorneys David Potts and Chris Stuart assisted in working up the case for summary judgment.

[John DiCaro](#) practices in governmental liability, personal injury, civil rights and insurance defense. John has tried cases for the cities of Phoenix and Mesa, several insurance carriers and a number of private companies.

[Eileen GilBride](#) focuses her practice on representing clients in federal and state appellate matters and dispositive motions. She has handled more than 400 appeals at every level of the state and federal courts, in Arizona and other states, which have resulted in more than 80 published decisions.

[Chris Stuart](#) has more than 20 years of litigation experience, defending mass tort, environmental, class action, and complex commercial litigation matters.

[Dave Potts](#) focuses his practice on employment law, general civil litigation, commercial and business litigation, and wrongful death and personal injury defense.

About Jones, Skelton & Hochuli:

With more than 85 lawyers, Jones, Skelton & Hochuli, P.L.C. (JSH) is the largest and most experienced trial defense law firm in Arizona specializing in insurance and insurance coverage. Our lawyers focus their practice in the defense of corporations, self-insureds, government entities, insurance carriers and medical malpractice carriers. For additional information please visit [jshfirm.com](#) or call 602.263.1700.