

BILL CARAVETTA, KEVIN BROERMAN, AND JUSTIN ACKERMAN OBTAIN FAVORABLE



Gonzalez v. Nguyen – JSH Attorneys [Bill Caravetta](#), [Kevin](#)

[Broerman](#), and [Justin Ackerman](#) obtained a favorable Opinion from the Arizona Supreme Court in an important default judgment case, saving their client almost \$1 million in the amount of an excessive default judgment, associated interest, and potential attorney's fees. In *Gonzalez v. Nguyen*, No. CV-17-0117-PR (April 12, 2018), the Arizona Supreme Court reversed the Arizona Court of Appeals and upheld a trial court's decision vacating a default judgment of more than \$667,000 in a low speed rear-end accident case.

Quoc Nguyen was driving a van owned by his employer, Dysart Hotel, and rear-ended Pablo Gonzalez's truck. The police report indicated the crash occurred at ten miles per hour and "no injury" occurred. Gonzalez sued Nguyen and Dysart, however, alleging that the crash caused him extensive injuries requiring surgery and physical rehabilitation and forcing him to retire from the Maricopa County Sheriff's Office. Defendants failed to answer the complaint, though Gonzales' lawyers repeatedly inquired. A default hearing occurred at which Gonzalez presented evidence and Defendants failed to appear. The trial court entered a default judgment in the amount of \$667,279.56. After receiving notice of the default judgment, Defendants filed a Rule 60(c) motion to vacate the judgment's damage award (though admitting liability), which the trial court granted.

On appeal, the Arizona Court of Appeals reversed the trial court's decision and reinstated the default damages. It reasoned that Defendants' only extrinsic support Defendants provided for vacating the default judgment was an affidavit from Defendants' insurer's claims manager avowing that the failure to respond was an oversight or administrative error. The claims manager had not offered a substantive defense to the lawsuit. The court of appeals overturned the trial court's decision vacating the judgment because Defendants had not presented a "meritorious defense" to support the motion.

Following oral argument by Justin on behalf of Defendants, the Arizona Supreme Court reversed and reinstated the trial court's decision to vacate the default judgment. It held that while a party seeking to vacate a default judgment under Rule 60(c)(6) must show a meritorious defense to the lawsuit, it need not make that showing with extraneous evidence (i.e., an affidavit). It can point to the existing default judgment record and demonstrate that the evidence presented did not support the default judgment amount. And in this case, the default judgment record itself demonstrated a potential meritorious defense because (a) the police reports (attached to Dysart's motion) noted the low speed of the Dysart vehicle, (b) Plaintiff did not indicate he was injured at the time of the accident and (c) Plaintiff had incurred \$68,683.58 in medical bills and \$42,558.92 in lost wages, which was far less than the default judgment amount. The Court held that "where, as here, the [existing default] record suggests that the judgment amount is excessive, a trial court appropriately may provide Rule 60(c)(6) relief."

[Bill Caravetta](#) concentrates his practice on both national and statewide bad faith class action litigation, bad faith litigation, insurance coverage disputes and opinions, and complex civil litigation. He also has significant appellate experience and has argued appeals before the Arizona Court of Appeals, the Arizona Supreme Court and the U.S. Court of Appeals for the Ninth Circuit.

[Kevin Broerman](#) concentrates his practice on bad faith, insurance coverage, professional liability, construction and general liability. He is a member of the Arizona Association of Defense Counsel and a past member of the Arizona State Bar Committee on Civil Jury Instructions.

[Justin Ackerman](#) represents clients in federal and state appellate matters in cases involving excessive force, wrongful death, personal injury, bad faith, and premises liability. Justin has successfully represented clients at the Arizona Court of Appeals, Arizona Supreme Court, and Ninth Circuit Court of Appeals.