

JSH ATTORNEYS WIN ON APPEAL FROM NEW TRIAL ORDER ENTERED TWO YEARS AFTER DEFENSE VERDICT

August 23, 2018 | Case Summaries, News



JSH attorneys Donald L. Myles, Jr., Lori Voepel, Ashley Villaverde Halvorson, and

Jennifer Anderson, prevailed in an appeal overturning a Rule 60(c)(6) order that had set aside a defense verdict in a bad faith case, which was filed by an insured Plaintiff after her house and vehicles were destroyed by fire in 2009. Following a 24-day trial, the jury issued a verdict in the insurer's favor based on overwhelming evidence establishing that the insurer had acted reasonably: (a) by initially denying Plaintiff's insurance claims (which were paid in full after criminal arson charges against Plaintiff were dismissed in 2010); and (b) by not turning over to Plaintiff its internal fire investigator's preliminary C&O report and insurer's claim file until after privilege issues could be judicially resolved.

Nearly two and one half years later, the trial court granted the extraordinary relief available under Rule 60(c)(6), Ariz. R. Civ. P., and set aside the jury's verdict. It did so based upon a 2014 Department of Public Safety Report (DPS Report) finding that two Phoenix Fire Department Captains had committed misconduct in association with their investigation of Sloan's fire and in securing a criminal indictment against Sloan.

In both the trial court and on appeal, the insurer demonstrated that it did not rely on the Phoenix Fire Department (PFD) investigation and/or Plaintiff's indictment to prove an "arson defense." Rather, it presented evidence of the PFD investigation, as well as its own exhaustive claims investigation and other evidence, to prove its conduct was reasonable at the time it initially denied Plaintiff's insurance claims and her request to turn over the insurer's file and report, both of which occurred in 2009 and 2010. The insurer argued that what an agency (DPS) found in a subsequent investigation over four years later is totally irrelevant to what the insurer based its decisions and conduct on at the time it handled Plaintiff's claims. It also argued that the evidence upon which DPS relied was provided to its investigators by Plaintiff. In other words, at the time of her bad faith trial, Plaintiff already had all of the underlying evidence upon which the DPS report was based.

The Court of Appeals agreed with the insurer that the trial court clearly erred and abused its discretion in ordering the extraordinary remedy of a new trial under Rule 60(c)(6). Because Plaintiff already had the underlying evidence at the time of her initial trial, the opinions contained in the report were the only new evidence upon which a re-trial could arguably be based. Yet, the trial court erroneously failed to even determine if the opinions would be admissible at a new trial, which was especially problematic because such evidence is not generally admissible. Moreover, the opinions and conclusions in the report were irrelevant to the central issue of whether the insurer acted reasonably in 2009 and 2010 by initially denying Plaintiff's claim and in not turning over its internal files until privilege issues could be judicially resolved. Finally, the Court of Appeals agreed that the report/opinion would not have made any difference in the verdict. The Court reversed the Rule 60(c)(6) order and remanded to the trial court.

After filing an unsuccessful motion for reconsideration, Plaintiff filed a petition for review in the Arizona Supreme Court, which was denied.

[Don Myles](#) focuses his practice on defending clients in cases involving catastrophic injury and wrongful death claims, bad faith and extra-contractual liability, professional liability, and insurance coverage and fraud.

[Lori Voepel](#) has handled over 300 federal and state appeals in virtually every area of the law, including governmental liability, medical and legal malpractice, employment law, civil rights, insurance defense and bad faith, product liability, school law, prison liability, administrative law, commercial law, construction law, airline liability, criminal law, workers' compensation, and family law.

[Ashley Villaverde Halvorson](#)'s practice focuses on defending insurance company clients in bad faith litigation, providing insurance coverage advice, and defending general personal injury and wrongful death actions.

Jennifer Anderson handles federal and state appeals concerning a wide range of issues, including commercial law, torts, insurance, governmental liability, employment, workers' compensation and family law.

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