

Sanctions

Trial Court Win Reversed for Spoliation

Driver/plaintiff should have preserved truck

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A Georgia plaintiff recently suffered the ultimate sanction of dismissal, despite having won his case at trial. The U.S. Court of Appeals for the Eleventh Circuit vacated the plaintiff's \$250,000 jury verdict and remanded for entry of judgment for the defendant as a sanction for spoliation of evidence.

After falling asleep and crashing his truck into a tree, the plaintiff asserted enhanced injuries as a result of a manufacturing defect in his truck's airbag system.

When plaintiff's counsel notified the defendant of his claim, defense counsel requested an opportunity to inspect the truck. Plaintiff's counsel did

not respond. One month after the accident, the plaintiff's insurer removed the truck and sold it for salvage.

As a sanction for spoliation of the truck, the district court instructed the jury to apply a rebuttable presumption that inspection of the truck would have yielded evidence unfavorable to the plaintiff. The jury nevertheless awarded the plaintiff \$250,000.

On appeal, the Eleventh Circuit held that "[n]o lesser sanction" than dismissal of the plaintiff's case could remedy the harm from destruction of the central evidence in the case. The plaintiff's "failure to preserve the vehicle resulted in extreme prejudice to the defendant, and failure to respond to defendant's letter displayed a clear dereliction of duty"

Spoliation accusations are a growth area in the practice of law. During the past two years, 198 reported decisions addressed requests for spoliation sanctions. During approximately the same period ten years ago, there were only 41 reported decisions. As recently as calendar year 2002, only 67 reported decisions addressed requests for spoliation sanctions. Many recent decisions deal with alleged failure to preserve electronic information, but the principles are the same regardless of the type of evidence.

Outright dismissal remains a harsh and rarely applied sanction. Only two weeks after the Eleventh Circuit issued its decision, the Tenth Circuit vacated a district court's decision to dismiss a plaintiff's claims for spoliation of electronic data. The Tenth Circuit emphasized that dismissal is a "weapon of last, rather than first, resort." *Procter & Gamble Co. v. Haugen*.

The Eleventh Circuit's decision remains a clear signal to the bar. "One thing lawyers can take away from this decision in the broader context of spolia-

tion is that the remedies can be severe," comments Richard L. Horwitz, Wilmington, DE, Co-Chair of the Section of Litigation's Pretrial Practice and Discovery Committee. "Although lawyers understand there are a variety of remedies for spoliation, people tend not to think of the ultimate sanction of dismissal. This decision shows it can happen" □

"Outright dismissal is still rare."

Resources:

Flury v. Daimler Chrysler Corp., 427 F.3d 939 (11th Cir. 2005)

Procter & Gamble Co. v. Haugen, 427 F.3d 727 (10th Cir. 2005).