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Federal Court Issues Spoliation Sanctions for Wiping of Laptop

The United States District Court for the District of Massachusetts (Judge Dein) recently imposed sanctions for spoliation that it found a plaintiff engaged in during a dispute with his former employer.

In *McLaughlin v. Lenovo*, plaintiff Daniel McLaughlin ("McLaughlin") claimed that he was owed unpaid commissions and reimbursement for unpaid business expenses from his former employer, Lenovo Global Technology (United States) Inc. ("Lenovo"). McLaughlin's request for compensation was based on documents maintained on his work computer. McLaughlin kept that computer after his termination, which was in violation of his agreement with Lenovo, and wiped the hard drive before returning it to the company. Lenovo eventually moved for a finding of spoliation and associated sanctions, arguing that, although McLaughlin provided SD cards on which he claimed to have saved data from the laptop before wiping it, the company did not have all information from the original laptop.

The court found that McLaughlin had engaged in spoliation and stated that he "provided disingenuous explanations for his actions . . . and made it impossible for the Company to

determine whether there had been additional information on the Laptop before the contents were downloaded onto the SD cards."

As sanctions, the court: (i) precluded McLaughlin from relying on calendar entries unless they were in Lenovo's system; (ii) required McLaughlin to reimburse the Company for the cost of three forensic examinations of the Laptop it had undertaken; and (iii) ordered that the jury, if the case goes to trial, be instructed regarding the wiping of the laptop and that it could infer that the deleted documents were unfavorable to McLaughlin.

Although spoliation sanctions are rare, this case is an important reminder of the need for all litigants to carefully preserve evidence once a dispute is on the horizon. It is also a reminder that transferring data from one device to another before wiping the first device may not be enough to avoid a finding of spoliation.

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