

September 2003

NEGLIGENT SPOILIATION

by Ted Babbitt

When evidence in possession of a party is willfully destroyed, Florida law provides for sanctions which may include the striking of that party's pleadings. Willfulness or bad faith of the responsible party has always been a required element before such an ultimate sanction is imposed. See Harrell v Mayberry, 754 So.2d 742 (Fla. 2nd DCA 2000).

In Nationwide Lift Trucks, Inc. v Smith, 832 So.2d 824 (Fla. 4th DCA 2002), the appellate court held that circumstances may exist which result in ultimate sanctions even where the destruction of evidence is not intentional. That case was brought on behalf of a worker who lost his foot when a forklift leased by the Defendant to the worker's employer ran away as an apparent consequence of a faulty braking mechanism. The Lessor Defendant obtained the forklift by promising the employer that it would be preserved as evidence and that no destructive testing would be allowed. When the Plaintiffs examined the forklift three years later, the braking mechanism had been removed and lost but there was no evidence that the defendant had willfully destroyed the evidence.

The Trial Court took evidence on the spoliation issue and determined that one of the key issues was whether the braking mechanism had been improperly assembled by the Defendant and that by removing it whether the Defendant made it impossible to determine the method of assembly thus preventing the Plaintiff from bringing an action which could be successful. The Trial Court struck the Defendant's pleadings and sent the case to the jury on damages only. After a multi-million dollar result, the Defendant appealed relying on the Fourth District's holding in New Hampshire Insurance Co. v Royal Insurance Co., 559 So.2d 102 (Fla. 4th DCA 1990) in which the Court stated:

The ultimate sanction of dismissal should always be viewed as a remedy of last resort and only in cases where the conduct of the party evidences deliberate and willful failure to submit to discovery.

The Fourth District, in reviewing New Hampshire Insurance, supra, pointed out that that opinion also held that if evidence was destroyed which was necessary for a party to proceed and that that party could not proceed without it, then the striking of pleadings could be warranted. The Court held:

The appropriateness of sanctions for failing to preserve evidence depends on: (1) willfulness or bad faith of the responsible party, (2) the extent of prejudice suffered by the other party, and (3) what is required to cure the prejudice. Harrell v Mayberry, 754 So.2d 742 (Fla. 2nd DCA 2000) and cases cited. In the present case the trial court found, applying these criteria, that plaintiffs were unable to proceed without the altered or lost evidence and, indeed, Nationwide has not suggested a credible lesser sanction which could have been fair to the plaintiffs. Under these circumstances the court did not abuse its discretion, even though the destruction of evidence may have resulted from negligence rather than an intent to obstruct justice.

The consequences of spoliation of evidence varies from jurisdiction to jurisdiction. The object of rules imposing sanctions for destruction of evidence is to attempt to put the aggrieved party in the same position they would be in if the evidence had not been destroyed. When, as here, the destruction of the evidence, even though not willful, effectively prevents a cause of action or defense, the only reasonable action that a court can take is to impose the ultimate sanction of the striking of an answer or dismissal of the claim. While these sanctions are reserved for extreme circumstances, they do have their place. Even where the destroying party's actions are not intentional, the destruction of the evidence can't be rewarded by placing the destroying party in a position superior to that which it held prior to

the destruction. Accordingly, the Fourth District has held that negligent destruction of evidence which results in loss of ability of an opposing party to proceed, requires the imposition of the severest of sanctions.

NOTE: BECAUSE A NUMBER OF PEOPLE HAVE REQUESTED COPIES OF PAST ARTICLES, A COMPILATION OF THESE ARTICLES IS NOW AVAILABLE TO MEMBERS OF THE PALM BEACH COUNTY BAR ASSOCIATION, FREE OF CHARGE, BY CALLING (561) 684-2500.