



Multi-State Midwest Survey on Spoliation

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Multi-state Survey on Law of Spoliation

This paper is broken down into two sections. The first section is an overview that summarizes the elements necessary for the spoliation of evidence in each state. The second section provides a detailed analysis of “spoliation law” in each state, the future of the law, and the application of current law to specific fact patterns.

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2. States: detailed analysis

a. Wisconsin

i. Current rule of law requires: intentional spoliation with a conscious attempt to affect the outcome of the litigation or a flagrant disregard of the judicial process.

Wisconsin's case law concerning spoliation is complicated and conflicting. First, there is a Supreme Court of Wisconsin case that explained the level of culpability necessary to trigger the spoliation doctrine: "[i]n Wisconsin the operation of the maxim omnia praesumuntur contra spoliatorem is reserved for deliberate, intentional actions and not mere negligence even though the result may be the same as regards the person who desires the evidence." Jagmin v. Simonds Abrasive Co., 211 N.W.2d 810, 821 (Wis. 1973). Next, there is an appellate court case that lowers the level of culpability in its dicta; the court stated: "[t]here is a duty on a party to preserve evidence essential to the claim being litigated. The failure to take adequate steps to preserve evidence that was totally within Sentry's control is sufficient to justify the imposition of sanctions." Sentry Ins. v. Royal Ins. Co. of Am., 539 N.W.2d 911, 918-919 (Wis. Ct. App. 1995). The Court of Appeals of Wisconsin attempted to harmonize the two cases in Garfoot v. Fireman's Fund Ins. Co.. See Garfoot v. Fireman's Fund Ins. Co., 599 N.W.2d 411 (Wis. Ct. App. 1999). The court explains that the conduct in Sentry was intentional and negligent, and that amounted to conduct which was egregious enough to warrant sanctions. Id. at 419. "[D]ismissal as a sanction for destruction of evidence requires a finding of egregious conduct, which, in this context, consists of a conscious attempt to affect the outcome of litigation or a flagrant knowing disregard of the judicial process." Id.

The result of the spoliation to the opposing party's case is not a controlling issue in Wisconsin. "[A]fter finding that a party, or persons acting on the party's behalf, has destroyed evidence with a conscious attempt to affect the outcome of the litigation or a flagrant knowing disregard of the judicial process, the trial court does have the discretion to impose a sanction of dismissal even though the destruction of the evidence has not impaired the opposing party's ability to present a claim or defense." Garfoot, 599 N.W.2d at 422-423.

ii. Future of the law

The tension between Sentry and Jagmin may not be settled. Sentry is an oft-cited case, and the statement about duty is mentioned by cases, though the intentional requirement is still the rule of law. See Reed v. Andrew Automotive Group, 610 N.W.2d 511; 2000 Wisc. App. LEXIS 73, 6 (Wis. Ct. App. 2000)(page numbers reflecting LEXIS citation).

iii. Application of the law

The court in Garfoot addressed the issue of spoliation where the defendant was seeking a sanction of dismissal in a case involving accidental alteration of the piping of a heater that had

caused a fire. Garfoot, 599 N.W.2d 411. The court explained: “this is not a situation in which one party has gathered evidence which the other party did not have, and will never have, the opportunity to do.” Id. at 423. The court remanded the case, stating that it did not find dismissal to be the appropriate sanction, but that some sanction was appropriate. Id. “When the trial court considers the nature of the conduct that resulted in destruction of evidence on remand, it should also revisit the issue of the impact the conduct had on the respondent’s ability to present a defense and make specific findings on issue.” Id.

In Neumann v. Neumann, the court addressed a case involving the death of a woman and the destruction of the gun that killed her by the defendant. Neumann v. Neumann, 626 N.W.2d 821, 828 (Wis. Ct. App. 2001). The defendant told investigators he did not want his wife’s death to look like a suicide, so he threw the gun that killed her into a river to preserve her memory. Id. The court explained: “When Neumann removed and then intentionally destroyed the gun used in the violent death of his wife, he knew or should have known he was interfering with potential civil and criminal litigation.” Id. at 842. “It is undisputed that this intentional spoliation interfered with law enforcement’s investigation, the estate’s case, and even Neumann’s own defense.” Id. The court affirmed the adverse inference instruction. Id.

In Reed v. Andrew Automotive Group, the court dealt with a case involving a dysfunctional car and a suit claiming that a mechanic introduced a foreign substance into the engine of a car. Reed v. Andrew Automotive Group, 610 N.W.2d 511; 2000 Wisc. App. LEXIS 73, 2-3 (Wis. Ct. App. 2000)(page numbers reflecting LEXIS citation). The plaintiffs told the defendant he could examine the car the day before the trial, as long as he would tow the car to and from the mechanic who currently had the car. Id. The defendant found this unreasonable. Id. The plaintiffs sold the car for salvage. Id. The defendant moved for a sanction of dismissal for spoliation of evidence. Id. The court concluded that since the defendant could not defend his case the sanction of dismissal was warranted, explaining: “The discovery process, in fact the circuit court action, had hardly begun when they unilaterally disposed of the only essential evidence in the case. They destroyed the entire automobile, including the cylinders and the cylinder head, before [the defendant] had inspected it, and in spite of [the defendant’s] obvious need to do so.” Id. at 7-8.

b. Nebraska

i. Current rule of law requires: intentional spoliation with bad faith.

The Nebraska Supreme Court explained: “We hold that an instruction on the inference that may be drawn from spoliation of evidence is appropriate only where substantial evidence exists to support findings that the evidence had been in existence, in the possession or under the control of the party against whom the inference may be drawn; that the evidence would have been admissible at trial; and that the party responsible for the destruction of the evidence did so intentionally and in bad faith.” State of Nebraska v. Davlin, 639 N.W.2d 631, 649 (Neb. 2002). The innocent party can still use the absence of the evidence against the spoliator, but it will not be able to trigger the spoliation doctrine unless it can show intent, fraud, and “a desire to suppress the truth.” Id. at 648.

ii. Future of the law

The Nebraska Supreme Court case dealing with the issue of spoliation of evidence is a criminal case. The rule of law quoted above seems to have been framed in such a way as to avoid limiting this particular application of the spoliation doctrine to criminal proceedings. The case law relied upon by the court is from other states. The cases citing Davlin are either criminal cases or a case dealing with issues unrelated to spoliation. Therefore, the future of the spoliation doctrine in civil cases is uncertain.

iii. Application of the law

In Davlin, the hospital discarded of internal organs of a dead body three years after the person had died in a fire. Id. at 644. This practice was routine. Id. The court found that there was no bad faith in destroying this evidence as a matter of routine. Id. at 647. The court went on to explain that there was still an issue as to the intent of the hospital in destroying the evidence: “while the missing evidence might have changed the State’s theory of the case, it would have done little to undermine the evidence presented by the State that established Davlin’s culpability for the killing.” Id.

c. Missouri

i. Current rule of law requires: intentional spoliation with fraud and a desire to suppress the truth.

“In Missouri, if a party has intentionally spoliated evidence, indicating fraud and a desire to suppress the truth, that party is subject to an adverse evidentiary inference.” Schneider v. G. Williams, Inc., 976 S.W.2d 522, 526 (Mo.App.E.D. 1998)(quoting Baughner v. Gates Rubber Co. Inc., 863 S.W.2d 905, 907 (Mo.App.E.D. 1993)). “[The spoliation doctrine is] not concerned with whether the opposing party suffers prejudice as a result of the destroyed evidence, the doctrine works only to punish the spoliator.” Id. “The adverse inference, however, does not prove the opposing party’s case. Instead, the spoliator is left to determine whether any remaining evidence exists to support his or her claim in the face of the inference.” Id.

ii. The future of the law

While Missouri law states that the adverse inference requires that the evidence is destroyed “under circumstances manifesting fraud, deceit or bad faith.” Id. at 527 (quoting Moore v. General Motors Corp., 558 S.W.2d 720, 735 (Mo.App.E.D. 1977)). It also seems to be pointing towards a lower threshold of negligence to preserve evidence: “it may be shown by the proponent that the alleged spoliator had a duty, or should have recognized a duty to preserve evidence.” Id. (quoting Morris v. J.C. Penney Life Ins. Co., 895 S.W.2d 73, 77-78 (Mo.App.W.D. 1995)). But for now the cases merely note this inclusion and still provide that: “without any evidence in the record manifesting bad faith or intent to defraud on the part of a party, application of the spoliation doctrine is inapplicable.” Id. at 528. Even the court that initially hinted at the negligence standard explains in a later case: “simple negligence, however, is not sufficient to apply the adverse inference rule.” DeGraffenreid v. R. L. Hannah Trucking, 80 S.W.3d 866, 873 (Mo.App.W.D. 2002).

iii. Application of the law

In Schneider, the court found that there was not the required level of fraud, deceit, or bad faith required to apply the spoliation doctrine. Schneider, 976 S.W.2d at 528. In that case after a fire destroyed a home, and a suit was filed where negligent installation of a chimney connector, an expert witness disposed of the remaining pieces of the chimney. Id. at 524. The court stated that since there was no evidence that the flu was discarded intentionally or in bad faith, the spoliation doctrine was not triggered. Id. at 528.

In DeGraffenreid, the court determined that there was “substantial competent evidence creating the inference of deceit and bad faith” in a party’s failure to produce certain telephone logs. DeGraffenreid, 80 S.W.3d at 873. The telephone logs not provided were from a two-month period before an employee’s stroke, and the logs were to be used to prove that the trucker had been driving more than federal regulations allowed. Id. at 874. The logs were said to be in a box somewhere, and the responses of the corporate representative that kept the logs ranged from not knowing where the logs were, to saying she had lost the logs, to admitting that she knew the trucker was violating federal law. Id.

d. Minnesota

i. Current rule of law requires: prejudice to the opposing party and exclusive control and possession of the evidence by the spoliator.

The Supreme Court of Minnesota accepts and applies “a reasonable and workable standard by which to test the impact of the spoliation – the prejudice to the opposing party. Implicit in that standard is the need to examine the nature of the item lost in the context of claims asserted and the potential for remediation of the prejudice. One challenging the trial court’s choice of sanction has the difficult burden of convincing an appellate court that the trial court abused its discretion.” Patton v. Newmar Corp., 538 N.W.2d 116, 119 (Minn. 1995). “Additionally, the doctrine of spoliation applies where a party responsible for the evidence’s destruction had exclusive control and possession of the evidence.” Wajda v. Kingsbury, 652 N.W.2d 856, 861 (Minn. App. 2002)(citing Kmetz v. Johnson, 113 N.W.2d 96, 101 (1962)). “The law in Minnesota is that spoliation of evidence need not be intentional to warrant sanctions.” Id. at 862.

ii. Future of the law

In 1990, the Supreme Court of Minnesota dealt with the issue of an independent tort for spoliation of evidence. The court explained: “we believe resolution of a plaintiff’s underlying claim is necessary to demonstrate actual harm and prevent speculative recovery in a spoliation action.” Federated Mut. Ins. Co., v. Litchfield Precision Components, Inc., 456 N.W.2d 434, 439 (Minn. 1990). The Court explained in that case, however, that the parties had delayed completing discovery until the court ruled on whether there was an independent tort of spoliation, and in Minnesota, the claims have to be adjudicated before the court recognizes a new cause of action. Id.

iii. Application of the law

In Patton, the court reviewed facts where a motor home had been repaired and subsequently caught fire. Patton, 538 N.W.2d at 117. Six months after the fire, plaintiff hired an investigator that photographed and retained some unidentified pieces of the mobile home. Id. The mobile home had been in a salvage yard, but then was lost, as were the unidentified pieces of the home removed by the investigator. Id. at 118. In finding that the plaintiff spoiled relevant and/or necessary evidence the court reasoned: “The defendant has been deprived of an opportunity to examine the vehicle since it left its control and would be limited in the preparation of its defense to a reliance upon photographs, drawings and testimony of the plaintiff’s own investigative expert. Because the critical item of evidence no longer exists to speak for the plaintiffs’ claims to the defendant’s defense, the trial court is not only empowered, but is obligated to determine the consequences of the evidentiary loss. Id. at 119.

In Dodd v. Leviton Manufacturing Co., Inc., 2003 Minn. App. Lexis 626 (Minn. App. 2003) the court sanctioned the plaintiff for spoiling a fire scene. Although the fire department was unable to determine the cause and origin of the fire, the fire investigator and electrical engineer retained by the plaintiff determined that the origin of the fire was either a can opener or a stereo caused by an electrical outlet. Id. at 3, 4. The plaintiff’s insurance company preserved the stereo, can opener, pictures of the scene, debris, the cord to the refrigerator, and relevant outlets, but discarded the remaining items at the fire scene and then waited eight months before placing the defendant on notice. Id.

In ruling that the plaintiff should be sanctioned, the court noted: “This court has recognized that ‘a fire scene itself is the best evidence of the origin and cause of a fire,’ and that a fire scene is of ‘unquestionable relevancy.’” Id. at 10 (quoting Hoffman v. Ford Motor Co., 587 N.W.2d 66, 71 (Minn. App. 1998)). “Although appellants’ investigators concluded that only the can opener, the stereo, or the outlet could have caused the fire, another investigator examining the fire scene could have reached a different conclusion.” Id. at 12.

e. Michigan

i. Current rule of law requires: prejudice to the opposing party and at least negligent spoliation.

“[A] trial court has the authority, derived from its inherent powers, to sanction a party for failing to preserve evidence that it knows or should know is relevant before litigation is commenced.” MASB-SEB Property/Casualty Pool v. Metalux, 586 N.W.2d 549, 553 (Mich. App. 1999). Sanctions may be imposed “regardless of whether the evidence is lost as the result of a deliberate act or simple negligence, [as] the other party is unfairly prejudiced because it is unable to challenge or respond to the evidence.” Brenner v. Kolk, 573 N.W.2d 65, 70 (Mich. App. 1997).

ii. Future of the law

The reasoning in the cases does not hint at future treatment of spoliation of evidence by the court.

iii. Application of the law

The court in Bloemendaal v. Town & Country Sports Center, Inc., addressed the issue of spoliation of evidence where a motorcycle crashed and the motorcycle was disassembled without checking the torque of the vehicle, though the ultimate claim was that “the bearing adjusting nut had been undertorqued.” Bloemendaal v. Town & Country Sports Center, Inc., 659 N.W.2d 684, 685 (Mich. App. 2002). The court explained:

The court did not base its decision on any actual piece of the motorcycle being lost or destroyed. Rather, while disassembling the motorcycle, plaintiffs' experts failed to test a certain part of the motorcycle that was essential to their ultimate theory of liability. Because this test can no longer be duplicated because the bearing adjusting nut has been removed, the failure to conduct the test amounts to the failure to preserve evidence. This test would have been evidence of whether the bearing-adjusting nut was properly torqued--a theory plaintiffs should have been aware of at the time of the inspection. Plaintiffs' failure to measure the torque at the time of disassembly severely prejudiced the defense. Because defendants were not present at the time of the disassembly, they were precluded from gaining this evidence on their own. The failure to preserve this evidence deprived the defense of the opportunity to inspect crucial evidence relative to this particular motorcycle.

Id. at 687-688. The court explained that other remedies short of dismissal were insufficient to overcome the prejudice of the spoliated motorcycle components. Id. at 688.

f. Iowa

i. Current rule of law requires: intentional spoliation and control of the evidence by the spoliator.

“Iowa remedies for spoliation of evidence include discovery sanctions, barring duplicate evidence where fraud or intentional destruction is indicated and instructing on an unfavorable inference to be drawn from the fact that evidence was destroyed.” Meyn v. State of Iowa, 594 N.W.2d 31, 34 (Iowa 1999). “[An] inference may only be drawn when the destruction of relevant evidence was intentional, as opposed to merely negligent or the evidence was destroyed as the result of a routine procedure.” Lynch v. Saddler, 656 N.W.2d 104, 111 (Iowa 2003). “Furthermore, the missing evidence must be ‘within the control of a party whose interests would naturally call for its production.’” Phillips v. Covenant Clinic, 625 N.W.2d 714, 719 (Iowa 2001)(quoting Quint Cities Petroleum Co. v. Maas, 143 N.W.2d 345, 348 (Iowa 1966)).

ii. Future of the law

The Iowa Supreme Court seems reluctant to adopt an independent tort of spoliation. In Meyn, the court refused to adopt a negligent spoliation of evidence theory and listed a number of issues with adopting an independent tort of spoliation. Meyn, 594 N.W.2d at 34.

In Hendricks v. Great Plains Supply Co., 609 N.W.2d 486, 491 (Iowa 2000) the Supreme Court of Iowa focused its spoliation inquiry on the remaining evidence and whether the opposite party had the opportunity to review the destroyed evidence. The loss in Hendricks involved a

fire in a home and after one month the house was demolished without notice to potential liable parties. Id. at 491. Thirty-two photographs were taken, portions of the flue pipe, wire, and insulation from the fire's origin were preserved. Id. The opposing party claimed that the entire fire scene should have been preserved. Id. The court disagreed and the opposing parties knew the fire had destroyed a home in which they were involved in construction and could have visited the scene and investigated. Id. "The plaintiffs were not required to preserve the fire scene indefinitely, and the demolition of the home in April 1994, did not constitute the spoliation of evidence." Id. The court further noted: "[w]e need not reach the question of whether the bad faith element required in criminal spoliation claims also applies in civil actions. Likewise, we need not determine whether under different circumstances a plaintiff might be obligated to notify potential defendants of possible claims and give them a reasonable opportunity to examine a fire scene before its destruction." Id. at 492.

iii. Application of the law

In Lynch, Phillips, and Hendricks, the Iowa Supreme Court found that the spoliation doctrine did not apply because the spoliator lacked the intent necessary to trigger the spoliation doctrine. In Lynch, the court stated: "the facts before us show it is not clear whether the [defendant's] employees intentionally destroyed the evidence with knowledge it was relevant to this litigation." Lynch, 656 N.W.2d at 111. In Phillips, a case of missing doctor notes, the presence of dictated and hand written notes of a physician's assistant did not prove that a hospital intended to purge itself of the rest of a patient's medical file. Phillips, 625 N.W.2d at 720. In Hendricks, the court explained: "the evidence does not support a finding of an intentional destruction of evidence. [The spoliators] extensively photographed the fire scene and preserved portions of the flue pipe, wire and insulation located in the area of origin. Hendricks, 609 N.W.2d at 491.

g. Indiana

iii. Current rule of law requires: intentional spoliation with exclusive possession of the evidence by the spoliator.

"Spoliation consists of 'the intentional destruction, mutilation, alteration, or concealment of evidence, usually a document.' If proved, spoliation may be used to establish that the evidence was unfavorable to the party responsible." Cahoon v. Cummings, 734 N.E.2d 535, 545 (Ind. 2000) (quoting Black's Law Dictionary 1409 (7th ed. 1999)). "In Indiana, the exclusive possession of facts or evidence by a party, coupled with the suppression of the facts or evidence by that party, may result in an inference that the production of the evidence would be against the interest of the party which suppresses it." Id. (quoting Porter v. Irvin's Interstate Brick & Block Co., 691 N.E.2d 1363, 1364-65 (Ind. Ct. App. 1998)); see also Great Am. Tea Co. v. Van Buren, 218 Ind. 462, 467 (1941). "The right of a party to pursue an independent action for spoliation of evidence has been recognized in Indiana." Burton v. Estate of Davis, 730 N.E.2d 800, 805 (Ind. Ct. App. 2000).

In Indiana, the analysis focuses on duty. This analysis is spelled out most clearly in cases involving independent tort actions for spoliation of evidence. When determining whether a duty to maintain evidence exists, the Indiana courts have applied a three factor duty analysis adopted

by the Indiana Supreme Court for duty issues: (1) the relationship between the parties, (2) the reasonable foreseeability of the type of harm to the type of plaintiff at issue, and (3) the public policy promoted by recognizing an enforceable duty. Thompson v. Owensby, 704 N.E.2d 134, 136 (Ind. Ct. App. 1998). The rule not only applies when a party actively endeavors to prevent disclosure of facts, but also when the party "merely fails to produce available evidence." Morris v. Buchanan, 44 N.E.2d 166, 169 (Ind. 1942).

Indiana courts consider insurance carriers as having a duty to maintain evidence in a number of scenarios. "In the context of the loss of evidence by an insurance carrier, the relationship between the carrier and a third party claimant could warrant recognition of a duty if the carrier knew or should have known of the likelihood of litigation and of the claimant's need for the evidence in the litigation." Thompson, 704 N.E. at 137. Insurance carriers trigger a duty to maintain evidence when they take "possession of documents and things that must be authenticated and tested to evaluate claims." Id. "[I]f an insurance carrier's investigator deems certain evidence important enough to be collected, it is foreseeable that loss of the evidence would interfere with a claimant's ability to prove the underlying claim." Id. at 138

iv. Future of the law

Cahoon, explains that there are very few cases in Indiana that deal with the alteration of evidence as spoliation, but Cahoon creates that opportunity. Cahoon, 734 N.E.2d at 545.

v. Application of the law

In Cahoon, the Supreme Court explained that alteration and destruction are both forms of spoliation. Cahoon, 734 N.E.2d at 546. In Cahoon, medical records had been altered by a single notation, and the court found an adverse inference to be an appropriate sanction. Id. at 545.

In Porter v. Irvin's Interstate Brick & Block Co., the court considered a spoliation case where a driveline fell from a truck onto a highway, causing an accident, and the driveline was not made available by the defendants. Porter v. Irvin's Interstate Brick & Block Co., 691 N.E.2d 1363 (Ind. Ct. App. 1998). The defendant exchanged the parts with a third party and was unable to reclaim the parts so that the plaintiff could examine them. Id. at 1365. "Thus, Interstate, which should have known under the circumstances that law suits were imminent, effectively destroyed evidence that was essential to the development of Porter and Conaway's case." Id.

h. Illinois

vi. Current rule of law requires: prejudice to the opposing party and at least negligent spoliation.

When dealing with spoliation of evidence claims raised during cases for sanctions, Illinois courts have stated: "a sanction which precludes a trial on the merits is only appropriate when the defense has incurred prejudice by the alteration or destruction of a crucial piece of evidence." H & H Sand & Gravel Haulers Co. v. Coyne Cylinder Co., 632 N.E.2d 697, (Ill. App. 1994). The courts have also noted: "negligent or inadvertent destruction or alteration of evidence may result in a harsh sanction, including dismissal, when a party is disadvantaged by the loss." Farley Metals v. Barber Colman Co., 645 N.E.2d 964, 968 (Ill. App. 1994)(citing

Graves v. Daley, 526 N.E.2d 679 (Ill. App. 1988)). “However, when the alteration or destruction of evidence does not prevent a party from establishing its case, there has been no prejudice, and sanctions which deprive the parties of a trial on the merits are inappropriate.” H & H Sand & Gravel Haulers Co., 632 N.E.2d at 705.

When dealing with spoliation of evidence claims as an independent action, the Illinois courts have provided that the proper suit is a traditional negligence tort: “the general rule is that there is no duty to preserve evidence; however, a duty to preserve evidence may arise through an agreement, a contract, a statute or another special circumstance.” Boyd v. Travelers Ins. Co., 652 N.E.2d 267, 270 (Ill. 1995). “In any of the foregoing instances, a defendant owes a duty of due care to preserve evidence if a reasonable person in the defendant’s position should have foreseen that the evidence was material to a potential civil action.” Id. at 271.

vii. Future of the law

In H& H Sand and Gravel Haulers Co. the court mentions: “although the evidence in this case was not retained by the plaintiffs or their agents, there was no showing that it was done in bad faith.” H& H Sand and Gravel Haulers Co., 632 N.E.2d at 705. This element is used to determine whether or not to bar the expert witnesses testimony. Id. This element of bad faith could play a larger role in spoliation cases in the future if courts move towards exclusion of witnesses as a common sanction.

viii. Application of the law

In H & H Sand & Gravel Haulers Co. the court addressed the issue whether exclusion of a witness’s testimony was warranted as a sanction for the spoliation of an acetylene cylinder and other mechanical components that could have caused a fire. See H & H Sand & Gravel Haulers Co., 632 N.E.2d 697. The court distinguished two cases where the court found the spoliation doctrine to apply – Graves v. Daley and American Family Insurance Co. v. Village Pontiac-GMC, Inc., 585 N.E.2d 1115 (Ill. App. 1992) – because in those two cases “the plaintiffs disposed of the *entire* defective product, which was the *only* item alleged by *either party* to have caused the damage and the *sole theory* of liability.” See H & H Sand & Gravel Haulers Co., 632 N.E.2d at 704. In H & H, the court explained that when the evidence was discarded the sole theory on the cause of the explosion, according to the plaintiff’s expert and the fire marshal, was the acetylene cylinder. Id. The defense counsel declined to inspect the cylinder, and later, after the photographed testing of the cylinder, the cylinder was spoliated. Id. Additionally, the defense theory of gasoline vapors causing the fire was formulated 3 years after the testing of the cylinder and discarding of other evidence. Id. The court determined that the destruction of evidence was not prejudicial. Furthermore, the court concluded: “the evidence does not establish that the plaintiffs deliberately destroyed relevant evidence harmful to their case.” Id. at 705. The court reversed the sanction orders. Id. at 706.