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Court Reminds Advocates the Importance of Making Timely Spoliation Motions

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Am. Nat'l Prop. and Cas. Co. v. Campbell Ins. Inc., No. 3:08-cv-00604, (M.D. Tenn., 2011)

On July 22, 2011, a district court in Tennessee denied a plaintiff's motion for sanctions for spoliation as untimely when the request was made over a year after the parties had learned of the spoliation and only a month and a half before trial was scheduled to begin.

Plaintiff alleged that the defendants violated a non-compete provision of a contract by forming a new corporation and soliciting the plaintiff's customers. In May 2010, the plaintiff learned that the defendants failed to preserve emails, which may have contained "damning" evidence of the defendants' efforts to solicit the plaintiff's customers. Over a year later — less than two months before trial — plaintiff moved for sanctions for spoliation of the emails.

When addressing the issue of spoliation, the Court cited *Goodman v. Praxair Services, Inc.*, 632 F. Supp. 2d 494 (D. Md. 2009), which provides a useful summary of the factors courts should consider in determining the timeliness of spoliation motions:

- *The "[k]ey to the discretionary timeliness assessment of lower courts is how long after the close of discovery the relevant spoliation motion has been made . . . ";*
- *A court should examine the temporal proximity between a spoliation motion and motions for summary judgment;*
- *Courts should be wary of any spoliation motion made on the eve of trial;*
- *Courts should consider whether there was any governing deadline for filing spoliation motions in the scheduling order issued pursuant to Fed. R. Civ. P. 16(b) or by local rule; and*
- *Finally, the explanation of the moving party as to why the motion was not filed earlier should be considered.*

In light of these factors, the Court concluded that the plaintiff's motion should be denied as untimely. In doing so, the Court reasoned that when the "plaintiff filed the [spoliation] motion on July 6, 2011, the alleged spoliation had occurred 14 months earlier, fact discovery had been closed for more than four months, and trial was scheduled to begin in less than seven weeks." Moreover, the Court wrote that the motion may have simply been a strategy used by the plaintiff to gain a "tactical advantage" and distract the defendants during trial preparation.

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