# Court Rules Against Imposing Sanction of Dismissal Because Plaintiff's Conduct Did Not Rise to the Level of a Willful Violation

January 14, 2013

## Fid. Nat'l Title Ins. Co. v. Captiva Lake Invs., LLC, 2012 U.S. Dist. LEXIS 163801, 1–2 (E.D. Mo. Nov. 16, 2012)

A United States District Court in the Eastern District of Missouri recently denied a Defendant's motion seeking to impose a sanction of dismissal against the Plaintiff because the Plaintiff's conduct did not "rise[] to the level of a willful violation of the order compelling production."

In *Fid. Nat'l Title Ins. Co. v. Captiva Lake Invs.*,[1], the Defendant asked Plaintiff to produce its claims file and other documents related to evaluating coverage under a certain policy. The Plaintiff, however, objected, claiming that many of the documents were protected by the attorney-client privilege and work-product doctrine. About a year after serving its discovery requests, Defendant found reference to a Plaintiff's Claims Processing System[2] ("CPS") in a recently produced claims handling guide. Rather than producing the data from the CPS the Plaintiff simply added them into an updated privilege log. The Court then directed the Plaintiff to provide the documents from Plaintiff's CPS for *in camera* review. In responding to the Court's Order, the Plaintiff produced only partial data. [3]

In general, for a Court to impose sanctions under Federal Rule of Civil Procedure 37, there must be: (1) an order compelling discovery; (2) a willful violation of that order; and (3) prejudice to the other party. [4] Rule 37 provides that a court may strike a party's pleadings or dismiss the action, but should resort to sanction of dismissal only "when the failure to comply has been due to . . . willfulness, bad faith, or any fault of petitioner." [5]

With respect to the Defendant's motion requesting the sanction of dismissal, the Court first reviewed the documents produced by the Plaintiff in response to the Court's order, which were simply screenshots of various fields in the CPS because no hard copy of the data in the system existed.  The Court noted that there were several deficiencies in producing the documents as screenshots. For example, some of information appearing at the bottom of the computer screen was cut off during the printing process, and more importantly, there was no metadata attached to screenshots, such as information regarding who input the information, the date on which it was entered, or the earlier contents of any particular field. This information would presumably be available if the data was produced in its native electronic format. [6]

In light of this fact, the Court ruled that although "the proceedings in this case present an extremely unflattering picture of [Plaintiff]'s document and data management practices," Plaintiff's failure to produce the data was not a willful violation of the order compelling production. The Court reasoned that because the Plaintiff took several measures in order to produce the data, including producing the fields in an excel file (which the Court noted was also defective) and working with an e-discovery specialists to produce the CPS data in a useful format, the Plaintiff's conduct was not a willful violation of the order. Therefore, the Defendant's motion for sanctions was denied. [7]

If you or your company has any questions or concerns regarding your document retention policy or any other e-discovery related issue, please contact Bruce Miller at bmiller@cullenanddykman.com or via his direct line at 516-296-9133.

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1. [1] *Fid. Nat'l Title Ins. Co. v. Captiva Lake Invs.*, LLC, 2012 U.S. Dist. LEXIS 163801, 1-2 (E.D. Mo. Nov. 16, 2012).
2. [2] As noted by the Court, the Plaintiff's "CPS is a computer-based application with multiple fields into which users input information on successive screens."
3. [3] *Fid. Nat'l Title Ins. Co.*, 2012 U.S. Dist. LEXIS 163801 at **3-5.
4. [4] *Fid. Nat'l Title Ins. Co.*, 2012 U.S. Dist. LEXIS 163801 at **3-4 (internal citations omitted).
5. [5] *Fid. Nat'l Title Ins. Co.*, 2012 U.S. Dist. LEXIS 163801 at *4 (internal citations omitted).
6. [6] *Fid. Nat'l Title Ins. Co.*, 2012 U.S. Dist. LEXIS 163801 at *5.
7. [7] *Fid. Nat'l Title Ins. Co.*, 2012 U.S. Dist. LEXIS 163801 at **6-7.