

## MICHIGAN COURT OF APPEALS RULES THIRD PARTY SPOILIATION OF EVIDENCE DOES NOT INTERFERE WITH POTENTIAL CIVIL ACTION

Trucking & Transportation Practice Group

September 25, 2009

Author: Michael K. Sheehy  
Direct: (313) 983-4721  
msheehy@plunkettcooney.com

In a recent published opinion, the Michigan Court of Appeals held state law does not recognize a cause of action against a third-party for spoliation of evidence that interferes with a prospective civil action.

In *Teel v. Meredith, et al.*, -- NW2d --, 2009 WL 1901641 (Mich. App. July 2, 2009), the case arose following a fire at a rented apartment, which resulted in the death of the Lillian Teel. Allstate, which insured the property, sent a representative to the apartment to inspect the premises without the knowledge or presence of the plaintiff. The inspector disturbed the scene and removed items from the apartment. The plaintiff alleged that these actions spoiled evidence concerning the origin and cause of the blaze, which affected the plaintiff's ability to bring or succeed in litigation arising from the fire.

The plaintiff alleged in this action that the landlord had negligently failed to maintain a safe premises and that Allstate failed, among other things, to avoid spoliation of evidence at the scene of the fire. The trial court granted summary disposition to Allstate, holding in part that spoliation of evidence is not recognized as a valid cause of action in Michigan. The plaintiff appealed, and the appellate court upheld the trial court's decision.

On appeal to the Michigan Court Appeals, the plaintiff argued that the facts of the case warranted the recognition of a cause of action for spoliation of evidence.

Upon review, the majority began its analysis by noting that the Michigan Legislature has the power to create new legal rights and define new causes of action, and although a court could determine, as a matter of law, whether a duty is owed, the Michigan Supreme Court has already stated that in some cases, it is preferable for a duty to be statutorily defined. The majority concluded that this was such a case.

The majority conceded that there were arguments in favor of an independent tort claim for spoliation of evidence such as the compelling policy consideration of the preservation of evidence, and the fact that destruction of crucial evidence may undermine the fairness of the underlying lawsuit.

However, the majority continued by noting that the policy considerations, which weighed against

the adoption of such a tort, traditionally dealt with spoliation through evidentiary mechanisms. The adoption of the tort would require defining a duty to preserve evidence, as it would be unreasonable to impose a boundless scope of such a duty, especially when the spoliator is a third party, as it is in this case. Furthermore, damages in spoliation cases are highly speculative, in that it is impossible to determine what impact the missing evidence would have had in the underlying action.

The majority then stated that the Legislature would be best equipped to investigate such a new cause of action and determine its possible consequences. Furthermore, public policy dictates that the Legislature is the proper body to address the issue since it has chosen to comprehensively regulate the field of insurance. Therefore, the court declined to recognize the independent tort of spoliation of evidence.

The majority stated that even if it adopted the reasoning of the dissent, recognizing an independent tort cause of action for spoliation as merely a remedy for the violation of the already existing right to the preservation of evidence, it would not find the remedy appropriate given the facts and circumstances of the present case. The majority further acknowledged that other remedies exist for the spoliation of evidence, such as an inference that the destroyed evidence would have been adverse to the destroying party. The majority also noted that even in the case of third-party spoliation, remedies for the aggrieved party still exist, such as discovery and criminal sanctions.

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