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Defendant wins \$1.6 million in attorney fees after plaintiff found to have concealed evidence

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In an opinion dated December 13, 2005, the U.S. District Court, Western District of Michigan – Southern Division awarded the defendant \$1.6 million in attorney fees and expenses, citing the individual plaintiff's bad faith in concealing evidence in an underlying retaliation case.

United States of America, ex rel. Mary Scott v. Metropolitan Health Corporation, ___ F.Supp.3d ___, Case No. 1:02-CV-485 (2005) first began as a *qui tam* action in which the plaintiff reported misconduct against the defendant under the False Claims Act. The *qui tam* portion of the suit was dismissed as part of a settlement agreement. In the suit, Ms. Scott received 18 percent of the government's share of the settlement. As of Dec. 13, 2005, she had been paid \$777,058, and was still owed over \$426,000.

Even though a settlement had been reached, Ms. Scott continued to pursue a \$10 million claim for retaliation against the defendant, asserting that she was terminated for reporting illegal conduct. After lengthy litigation, the defendant demonstrated the plaintiff was properly terminated for altering corporate minutes and wrongfully concealing tapes of Board meetings.

The U.S. District Court judge in the case held that the plaintiff's bad faith in concealing evidence, submitting false evidence and prosecuting a retaliation claim she knew to be illegitimate justified the sanction of awarding the defendant its actual attorney fees. Significantly, the court determined that federal courts have the inherent power to award attorney fees to punish the bad faith conduct of litigants, citing *Alyeska Pipeline Service Co. v. The Wilderness Society*, 421 U.S. 240 (1975).

In addition to an award of attorney fees, the court asserted its equitable powers to require that the monies still due to the plaintiff be paid into a special account and then distributed to the defendant in order to avoid the possibility that the plaintiff would evade payment of that portion of the attorney fee award.



In reaching its decision, the court emphasized that the plaintiff's "conduct throughout the suit has been to deny secret wrongdoing, until confronted with undeniable evidence of it." Although these types of attorney fee awards are and will most likely remain rare, this case serves as a reminder that the courts will impose very significant attorney fee awards against even individual plaintiffs when warranted.

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