

News Release

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COURT URGED TO IMPOSE SANCTIONS ON PARTIES THAT DESTROY EVIDENCE *(Mt. Olivet Tabernacle Church v. Emerson Electric Co.)*

The Washington Legal Foundation (WLF) today urged the Pennsylvania Supreme Court to hold that sanctions should be imposed on a party to litigation whenever he is responsible for the destruction of relevant evidence and the opposing party is prejudiced thereby.

In a brief filed in *Mt. Olivet Tabernacle Church v. Emerson Electric Co.*, WLF argued that unless meaningful sanctions are imposed on parties that destroy evidence that could have helped the other side of a lawsuit, wholesale destruction of evidence will become rampant, and the public will lose faith in the fairness of the judicial system. WLF asked the court to overturn a large verdict in a product liability action because the plaintiff had destroyed significant amounts of evidence, thereby impairing the defendant's ability to mount a defense.

"WLF has no basis for disputing the plaintiff's contention that it acted in good faith in destroying evidence," WLF Chief Counsel Richard Samp said after filing WLF's brief. "But unless the courts make clear that intentional evidence destruction requires the imposition of some sanction by the courts, there can be little doubt that the incidence of destruction of relevant evidence will increase," Samp said.

The case arose as a result of a fire that destroyed a church in West Philadelphia. An investigation by the church's insurer determined that the fire was probably started by a water heater used to heat the baptismal font. The insurer paid the church's losses and then began preparing a subrogation claim against the manufacturer of the water heater. The church sat unrepaired for more than 1 1/2 years, but the manufacturer was not notified about the potential products liability claim. Just before the manufacturer was notified of the potential claim, the fire scene was destroyed and church renovations began. The result was that the manufacturer could not inspect the fire scene, and thus had no method of investigating whether there might have been another cause.

At trial, the manufacturer requested that the jury be told that because the church and its insurer had intentionally destroyed relevant evidence (the fire scene), the jury was free to infer that the destroyed evidence would have included items favorable to the manufacturer. The judge refused to give that instruction, and the jury ended up awarding the church's insurance company nearly \$1 million in damages.

In its brief to the Pennsylvania Supreme Court, WLF argued that a sanction should always be awarded when (as here) one side's intentional destruction of evidence prejudices the opposing party's ability to mount a case. WLF argued that a "spoliation" instruction along the lines requested by the manufacturer is the minimum sanction that should be imposed in such circumstances. WLF argued that such an instruction is required both to deter future misconduct and to level the imbalance in the playing field caused by one party's improper evidence destruction. WLF argued that it should make no difference whether the party that destroyed evidence was acting in good faith; a sanction is necessary to encourage future compliance.

WLF is a public interest law and policy center with supporters in all 50 states, including many in Pennsylvania. WLF devotes a substantial portion of its resources to tort reform and efforts to prevent unwarranted expansion of existing causes of action.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's brief can be viewed on its website, www.wlf.org.