



THE BASSETT FIRM  
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*Passion. Preparation. Persistence.*

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## THE BASSETT BULLETIN™

### “SPOLIATION, WHAT IS IT, AND SHOULD I BE CONCERNED ABOUT IT?”

**S**poliation is the negligent or intentional destruction of evidence. You, as the company that has been sued, need to be concerned about it. It is one of the many ways a Plaintiff’s attorney tries to make a lawsuit about the company, and not just about the incident that injured the Plaintiff. Remember, if a Plaintiff’s attorney can make the jury mad at the company, there is the strong likelihood the jury will express its anger in the form of big monetary damages.

### EXAMPLES OF HOW SPOLIATION MIGHT COME UP

Let’s take a premises liability case. A customer at a store slips on a wet floor and breaks her back. There are no eyewitnesses to the incident. The first to respond to her is the employee who had been mopping in the area. A manager is then called to the scene and arrives minutes later. While waiting for the ambulance, the woman tells the employee and manager that there was no wet floor sign. After the woman leaves, the manager fills out an incident report stating the woman claims there was no wet floor sign, but that one was present when she (the manager) arrived. The store has video surveillance at the time that covers the particular area where the woman slipped, which is a category the manager checks on the accident report. The surveillance video is not kept following the incident and is recorded over, which is the normal practice each day.

Let’s also look at a trucking case. Your driver crossed the center line and killed an oncoming motorist. Eyewitnesses at the scene report to the officer that the truck driver had been swerving outside his lane. The Decedent’s family files a lawsuit eight months later, and through a request for documents, asks for the driver’s logs. Per the retention policy of the trucking company that mirrors the Federal Motor Carrier Safety Regulations, the driver’s logs no longer exist.

Should each of the above companies anticipate that a lawsuit might be filed? Would the evidence at issue be important? If so, will the Plaintiffs need the surveillance video and logs in order to present their case?

As to the premises case, immediately following the fall, the company knows (1) a person has sustained significant injuries in its store; (2) this person is making statements that raise the potential for liability on the part of the store, e.g., it did not warn of the wet floor with a sign; and (3) evidence exists which could show one way or the other whether the sign was present.

Looking at the trucking example, immediately following the accident, the company knows (1) a person has died in an accident involving one of their employees; (2) the exposure to the company may be significant because the company’s driver crossed the center line; (3) witnesses are raising the question of fatigue in describing the driver swerving; (4) the crossing of the center line raises the question of fatigue; and (5) the driver’s logs have the potential to shed light on the question of fatigue.

## THE LIKELY VERDICT

In our opinion, the Court will likely find that both of the companies should have anticipated a lawsuit and that the evidence at issue would be important. Likewise, the Court will likely find that the Plaintiffs are handicapped in presenting their case without the evidence.

So what's your punishment?

Stay tuned for the next edition's article, "Spoliation – Why I should be concerned" to learn how the Courts have dealt with spoliation.

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