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TENNESSEE COURT VACATES DISMISSAL OF CLAIM BASED ON PLAINTIFFS' SPOILIATION OF EVIDENCE BECAUSE THE DEFENDANT SPOILIATED EVIDENCE ALSO¹

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A fire occurred on June 10, 2008, when an employee of Arrow Gas & Oil was refueling one of Griffith Services Drilling's rigs in Anderson County, Tennessee. Griffith later alleged that the nozzle on the Arrow truck hose malfunctioned "triggering an overflow and spill of fuel which was then ignited by operating equipment nearby..."²

Griffith was insured by Lexington, which paid approximately \$1.2 million in damages. Griffith cleaned up the site with the approval of Lexington. Lexington and Griffith then put Arrow on notice of their determination that Arrow caused the fire and should therefore be responsible for the damage.

During the fire, the Arrow truck driver moved the truck and broke the hose nozzle, key evidence under Griffith's above theory of causation. The nozzle's spout was left in the tank; the rest of the nozzle stayed with the fuel truck hose. Soon after the fire, the Arrow truck driver traded in the broken nozzle part for a replacement nozzle as he usually did with broken nozzles.

The trial court dismissed Griffith's claim because it cleaned up the site without Arrow's involvement. The appellate court held that the trial court's dismissal of Griffith's claim was not warranted because Arrow was also guilty of spoliation when it disposed of the nozzle.

Consider the following points if you are pursuing a subrogation claim:

- (1) Even if the subrogator destroyed evidence that it should have preserved, investigate whether the potentially responsible party ("PRP") also destroyed evidence. If so, the mutual destruction of evidence might cancel out any spoliation argument made by the PRP. Under the Arrow case, this was true even though the PRP's destruction of evidence was much more narrow, specific, and limited, disposing of the allegedly malfunctioning nozzle, than was the insured's action of cleaning up the entire fire scene with the approval of the subrogating carrier.
- (2) A party arguing spoliation by another party may not need to prove negligence or culpability by the spoliating party. Arrow's disposal of the nozzle occurred soon after the fire in the regular course of business. Griffith and Lexington, the parties who suffered the loss, took no action to preserve evidence controlled by Arrow until over a month after the fire. The

¹ Griffith Services Drilling, LLC v. Arrow Gas & Oil, Inc., 2014 WL 2187846.

² The opinion does not include any other discussion of the cause of the fire.

opinion cited no evidence that Arrow had a duty to preserve the nozzle at the time that it was destroyed or that Arrow acted with a culpable state of mind. Arrow might have argued that Griffith and Lexington were the only parties with a duty to preserve the nozzle. If it made this argument, the opinion did not address it.