Illinois Imposes Tough Standard for Pursuing Spoliation Claims

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by: Edward A. Jaeger, Jr. and William L. Doerler

In Martin, et. al. v. Keeley & Sons, Inc., -- N.E.2d --, 2012 WL 4950881 (Ill. Oct. 18, 2012, the Supreme Court of Illinois addressed the parameters of a negligent spoliation cause of action in Illinois. In particular, the court addressed the questions of when a defendant voluntarily undertakes to preserve evidence and when special circumstances give rise to a duty to preserve evidence. The court held that to show that the defendant voluntarily undertook to preserve evidence, a plaintiff must show not only that the defendant undertook to preserve evidence, but also that it undertook to preserve the evidence as evidence in potential future litigation. Discussing when special circumstances give rise to a duty to preserve evidence, the court held that the defendant’s possession and control of the evidence, standing alone, is insufficient to establish a duty to preserve evidence. The fact that the defendant charged with spoliation of evidence was the plaintiffs’ employer did not change the analysis. Thus, plaintiffs seeking to pursue a negligent spoliation claim in Illinois have a tough standard to meet in order to hold a defendant liable.

The spoliation claim in Martin arose out of a construction site accident. Three employees of the defendant, Keeley & Sons, Inc. (Keeley), were injured when a concrete I-beam used to support the bridge deck upon which the plaintiffs were standing collapsed, causing the plaintiffs to fall in a creek. On the same day as the accident, but after it had occurred, the Illinois Department of Transportation and the Occupational Safety and Health Administration inspected the accident site. The next day, Keeley destroyed the I-beam by breaking up the concrete portion of the beam with a hydraulic hammer. The plaintiffs, who were transported to the hospital following the accident, were not aware of the I-beam’s destruction until after it had been destroyed.

Based upon the accident, the plaintiffs filed suit against Keeley, Egyptian Concrete Company (Egyptian), the manufacturer of the I-beam, and Allen Henderson & Associates, Inc. (Allen), the designer of the bearing assembly that supported the I-beam. The plaintiffs’ claims against Keeley were based on Keeley’s negligent spoliation of evidence. In support of their claims, the plaintiffs alleged that Keeley owed them a duty to preserve the beam as evidence in potential litigation and that, by failing to do so, the plaintiffs were unable to prove their claims against Egyptian and Henderson. Egyptian and Henderson subsequently filed counterclaims against Keeley that included claims based upon Keeley’s negligent spoliation of evidence.

To establish a negligent spoliation claim in Illinois, a plaintiff needs to prove that: 1) the defendant owed the plaintiff a duty to preserve the evidence; 2) the defendant breached its duty; 3) the loss of the evidence was the proximate cause of the plaintiff’s inability to prove claims in an underlying lawsuit; and 4) as a result, the plaintiff suffered actual damages. As is set forth in Martin, the general rule in Illinois is that there is no duty to preserve evidence. Thus, in order to pursue a spoliation claim, the plaintiff needs to establish an exception to the general rule. To establish an exception to the “no duty” rule, a plaintiff must meet a two-part test. The first part, the “relationship” part, requires that the plaintiff
show an agreement, contract, statute, special circumstance, or voluntary undertaking that imposed a duty on the defendant to preserve the evidence at issue. The second part, the “foreseeability” part, requires a plaintiff to show that the duty extends to the specific evidence at issue by showing that a “reasonable person in the defendant’s position should have foreseen that the evidence was material to the potential civil action.”

Because there were no allegations that an agreement, contract, or statute required Keeley to preserve the I-beam as evidence, the plaintiffs sought to establish that Keeley had a duty to preserve the I-beam by showing that Keeley voluntarily undertook to preserve it or, alternatively, that “special circumstances” – Keeley’s exclusive possession and control of the evidence, Keeley’s status as the plaintiffs’ employer, and Keeley’s status as a potential litigant – gave rise to a duty to preserve the evidence. Although the intermediate appellate court, based upon its finding that Keeley preserved the evidence for its own purposes, held that Keeley voluntarily undertook a duty to preserve the I-beam, the Supreme Court of Illinois rejected this finding. As noted by the Supreme Court, even if Keeley preserved the evidence for its own investigative purposes, there was no evidence of affirmative conduct showing that Keeley voluntarily undertook to preserve the I-beam for the purpose of potential future litigation.

Discussing the question of when special circumstances can give rise to a duty to preserve evidence, the court held that possession and control, standing alone, are not sufficient to establish a duty to preserve evidence. Rather, something more – such as a request by the plaintiff to preserve the evidence and/or the defendant segregating the evidence for the plaintiff’s benefit – is required. Although the Supreme Court acknowledged that the plaintiffs were hospitalized and had little or no opportunity to request that Keeley preserve the evidence, the court held that the plaintiffs failed to show that Keeley’s mere possession and control of the I-beam constituted a special circumstance sufficient to overcome the general “no duty” rule. Similarly, the court held that Keeley’s status as the plaintiffs’ employer did not establish that Keeley owed the plaintiffs a duty to preserve the I-beam. Finally, the court held that the fact that Keeley was a potential litigant did not create a duty to other potential litigants to preserve evidence.

In summary, to establish that the defendant voluntarily undertook to preserve evidence, a plaintiff in Illinois needs to show that the defendant, by affirmative conduct, undertook to preserve the evidence for use in potential future litigation. To establish that special circumstances exist, a plaintiff must show “something more” than mere possession and control of the evidence. The “something more,” however, must be more than the fact that the plaintiff and the defendant had an employee-employer relationship at the time of the accident and that the plaintiff, due to hospitalization, did not have the opportunity to request that his or her employer preserve the evidence. The court’s analysis imposes a tough standard for plaintiffs seeking to pursue a negligent spoliation claim and suggests that lower courts should define the scope of the duty owed in such cases narrowly.

For more information regarding this alert, please contact Ed Jaeger (215.864.6322 / jaegere@whiteandwilliams.com) or Bill Doerler (215.864.6383 / doerlerw@whiteandwilliams.com).

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