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## 1999 Survey of Rhode Island Law: Cases: Evidence

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**Evidence.** *Farrell v. Connetti Trailer Sales, Inc.*, 727 A.2d 183 (R.I. 1999). When a party in a civil action knowingly or negligently destroys relevant evidence, the opposing party is entitled to a jury instruction explaining that the jury may infer that had the evidence been available, it would have been unfavorable to the destroyer. It is an abuse of discretion for a trial judge to exclude all evidence relating to the destroyed evidence, absent a showing that the destruction was done in bad faith.

#### FACTS AND TRAVEL

In 1989, plaintiffs William and Barbara Farrell (the Farrells) purchased a 1989 Pace Arrow motor home from Connetti Trailer Sales, Inc. (Connetti) for \$74,164.<sup>1</sup> Connetti is a Rhode Island retailer of motor homes and trailers.<sup>2</sup> The Pace Arrow motor home was manufactured by Fleetwood Enterprises, Inc. (Fleetwood), whose principle office is in California.<sup>3</sup> Several months after purchasing their motor home, the Farrells received a recall notice notifying them of the need to replace the rear tag axle.<sup>4</sup> Consequently, they brought the motor home to Connetti to have the necessary repairs completed.<sup>5</sup>

Shortly after Connetti completed the repairs, the Farrells noticed a squeaking noise in the rear of the vehicle and unusual vibrations when the motor home was in motion.<sup>6</sup> The Farrells alleged that these vibrations jolted the fixtures within the motor home out of place.<sup>7</sup> During a road trip, they brought the vehicle to a shop in Las Vegas, Nevada for repairs. The Farrells alleged that the mechanic there told them that Connetti had improperly performed the recall repairs.<sup>8</sup> While Fleetwood did eventually pay for the repairs to the rear tag axle, it did not authorize or pay for any repairs to the interior fixtures.<sup>9</sup> The Farrells' problems with the suspension and the interior fixtures continued.<sup>10</sup>

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1. See *Farrell v. Connetti Trailer Sales, Inc.*, 727 A.2d 183, 184 (R.I. 1999).
  2. See *id.*
  3. See *id.*
  4. See *id.*
  5. See *id.*
  6. See *id.*
  7. See *id.*
  8. See *id.*
  9. See *id.*
  10. See *id.*

The Farrells eventually relocated to Florida where they continued to live in the motor home.<sup>11</sup> Fleetwood did in fact reimburse the Farrells for the interior repairs, but the vehicle continued to vibrate.<sup>12</sup> After an unsuccessful attempt to have the vehicle repaired in Florida at Fleetwood's expense, Fleetwood contacted the Farrells by mail and telephone requesting that they return the vehicle for inspection or repairs.<sup>13</sup> This could take place either at Connetti or a regional service center in Paxinos, Pennsylvania.<sup>14</sup> Fleetwood offered to pick up and transport the vehicle to Pennsylvania and back to Florida at no charge.<sup>15</sup> The Farrells refused the offer.<sup>16</sup>

Although the Farrells later drove the motor home through Pennsylvania on a trip from Florida to Rhode Island, they did not stop in Paxinos because "Mr. Farrell had never heard of Paxinos and it would have been out of their way to get there."<sup>17</sup> Mr. Farrell refused to bring the motor home to the service center himself or allow it to be picked up because he had already arranged to surrender it to the financing bank.<sup>18</sup> Eventually the Farrells decided to allow the bank that had financed the sale to repossess the vehicle. The bank did so, and eventually sold the vehicle "at much less than its value because of its condition."<sup>19</sup> This left the Farrells with approximately \$27,000 remaining on their obligation to the bank.<sup>20</sup>

About two years later, the Farrells filed suit against Connetti and Fleetwood.<sup>21</sup> The defendants filed a request for the production of the motor home so that they could inspect it.<sup>22</sup> The Farrells were unable to comply with the request for production of the motor home because by this time they had already surrendered the vehicle to the bank. Both defendants filed amended answers claiming

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11. *See id.*

12. *See id.*

13. *See id.* at 184-85.

14. *See id.* at 185.

15. *See id.*

16. *See id.*

17. *Id.*

18. *See id.*

19. *Id.*

20. *See id.*

21. *See id.*

22. *See id.*

the affirmative defense of spoliation.<sup>23</sup> The defendants then moved in limine to exclude all evidence concerning the motor home after Connetti last inspected it.<sup>24</sup> The superior court granted the defendants motion in limine, concluding that the evidence in question, the motor home, was the heart of the case.<sup>25</sup> The trial judge held that it would be "patently unfair" for the Farrells to introduce evidence about the vehicle's defects when the "defendants had no reasonable opportunity to counteract those claims."<sup>26</sup> The trial justice also noted that the Farrells had refused numerous requests by Fleetwood to inspect the vehicle during the period when it was within the Farrells' possession.<sup>27</sup> The defendants moved to dismiss. The superior court granted the motion to dismiss, holding that "there are no set of facts admissible at trial which would give rise to a cause of action against the defendants."<sup>28</sup> The Farrells appealed the entry of judgment for the defendants to the Rhode Island Supreme Court.<sup>29</sup>

#### ANALYSIS AND HOLDING

In this case, the Rhode Island Supreme Court was faced with the question of whether the doctrine of spoliation allows for the suppression of all evidence that could not be examined by the opposing party. The trial judge excluded all evidence regarding the condition of the motor home after Connetti last examined it.<sup>30</sup> The supreme court held that the trial judge appropriately applied the factors in determining a remedy for spoliation.<sup>31</sup> However, while

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23. *See id.*

24. *See id.*

25. *See id.*

26. *Id.*

27. *See id.*

28. *Id.*

29. *See id.* at 184.

30. *See id.* at 185.

31. *See id.* at 187. The court listed five factors:

[I]n determining an appropriate sanction for the spoliation of relevant evidence [the court considers] '(1) whether the defendant was prejudiced . . . ; (2) whether the prejudice can be cured; (3) the practical importance of the evidence; (4) whether the [despoiler acted] in good faith or bad faith; and (5) the potential for abuse if the evidence is not excluded.'

*Id.* (quoting *Northern Assurance Co. v. Ware*, 145 F.R.D. 281, 282-83 (D. Me. 1993)).

the trial judge properly concluded that action was necessary, he abused his discretion in selecting a remedy for the spoliation.<sup>32</sup>

In making this determination the court examined its holding in *Rhode Island Hospital Trust National Bank v. Eastern General Contractors, Inc.*<sup>33</sup> The court noted that under the doctrine first discussed in *Eastern General*, “all things are presumed against a despoiler.”<sup>34</sup> The court explained that “the deliberate or negligent destruction of relevant evidence by a party to litigation may give rise to an inference that the destroyed evidence would have been unfavorable to the spoliating party.”<sup>35</sup> The court noted that a showing of bad faith by the despoiler is not required, but that it can strengthen the inference that the evidence would have harmed the despoiler.<sup>36</sup> The court concluded that the Farrells knew that the motor home was relevant to their dispute with the defendants.<sup>37</sup>

The court noted that while *Eastern General* was instructive on the doctrine of spoliation, it did not address the precise situation presented by the Farrells’ case.<sup>38</sup> Here, the trial judge did more than instruct the jury to draw a negative inference from the unavailability of the motor home.<sup>39</sup> He barred the plaintiffs from introducing any evidence of the motor home’s condition after Connetti had repaired it.<sup>40</sup> Noting that although courts in other jurisdictions have held that a trial judge may bar all evidence relating to evidence destroyed by that party, the supreme court held that that doing so in this case was an abuse of discretion.<sup>41</sup>

The court held that the exclusion of all post-repair evidence was unwarranted absent a showing of bad faith on the Farrells’ part.<sup>42</sup> Concluding that bad faith on behalf of the Farrells had not been shown, the court determined that the Farrells’ reluctance to bring the motor home to Connetti was not “arbitrary and unrea-

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32. *See id.*

33. 674 A.2d 1227 (R.I. 1996).

34. *Farrell*, 727 A.2d at 186 (quoting *Eastern General*, 674 A.2d at 1234).

35. *Id.*

36. *See id.*

37. *See id.*

38. *See id.* at 187.

39. *See id.*

40. *See id.*

41. *See id.*

42. *See id.*

sonable."<sup>43</sup> This finding was based upon the history of problems with the repair work that Connetti did and the fact that the Farrells would have lost possession of the motor home for an unknown amount of time.<sup>44</sup> The court also noted that while the defendants knew of the Farrells' intention to surrender the vehicle to the bank, they never offered to inspect the vehicle while it remained in either the bank's or the Farrells' possession.<sup>45</sup>

Therefore, the court reversed and remanded the case for a new trial, instructing the superior court to allow the Farrells the opportunity to admit evidence of the defective repairs and to allow the defendants the opportunity to rebut this evidence.<sup>46</sup> The court also ordered the trial judge to instruct the jury that because of the Farrells' conduct in causing the motor home to be unavailable, they *may* infer that had the inspection been performed, it would have shown that the repairs were done properly.<sup>47</sup>

#### CONCLUSION

Where a party deliberately or negligently destroys relevant evidence, the opposing party is entitled to a jury instruction explaining that the jury may infer that had the evidence been available, it would have been unfavorable to the case of the party that destroyed it. The jury must also be instructed that the inference is permissible, but not mandatory. In addition, a trial judge may not exclude evidence relating to the destroyed evidence absent a showing of bad faith by the spoliating party.

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43. *Id.*

44. *See id.*

45. *See id.*

46. *See id.* at 188.

47. *See id.*