

ALERTS AND UPDATES

U.S. District Court Imposes Stiff Sanctions for Destruction of Electronically Stored Information in Discovery

September 27, 2010

In a decision likely to be one of this year's definitive rulings regarding preservation and spoliation of electronically stored information (ESI), on September 9, 2010, Chief U.S. Magistrate Judge Paul Grimm of the U.S. District Court for the District of Maryland—a well-regarded jurist on the cutting edge of ESI discovery issues—issued a ruling in *Victor Stanley, Inc. v. Creative Pipe, Inc.*,¹ imposing stiff sanctions on litigants he found responsible for the deletion of substantial amounts of ESI. These sanctions, including a default judgment on liability and a conditional sentence of up to two years in prison for the principal of one of the defendants, were the result of a pattern of ESI destruction constituting what the judge termed "the single most egregious example of spoliation that I have encountered in any case that I have handled or in any case described in the legion of spoliation cases I have read in nearly fourteen years on the bench."

Plaintiff Victor Stanley, Inc. (VSI) brought suit in October 2006 against Creative Pipe, Inc. (CPI) and its president Mark Pappas, alleging that CPI and Pappas violated VSI's copyrights and patents by surreptitiously downloading VSI's design drawings and specifications from its website and using those drawings to compete with VSI. Notwithstanding the duty to preserve ESI once the litigation began, Pappas almost immediately undertook a wide-ranging deletion of ESI—often right before significant events like discovery hearings and the copying of data on Pappas' computer—apparently with an eye toward erasing all traces of CPI's misappropriation of VSI's intellectual property.

Chief Magistrate Judge Grimm's decision undertook a broad survey of relevant decisions from around the United States (including as an appendix to his opinion a 12-page chart setting forth the preservation and spoliation standards in each of the 13 federal circuits). The most-significant unifying theme from this survey is that both the obligation to preserve ESI and the sanctions for failing to do so are guided by an assessment of the reasonableness of the party's actions and proportionality of those actions to what is at stake in the case and the likely benefit of the ESI in question. In this regard, implementation of a litigation-hold, once litigation is reasonably anticipated, is key, as such a hold is often treated as prima facie evidence of reasonableness.

After reviewing his alternatives in fashioning a sanction against CPI and Pappas, Chief Magistrate Judge Grimm—in addition to recommending entry of a default judgment against both on VSI's copyright claim—found Pappas in contempt and ordered him to pay VSI's attorneys' fees and costs associated with its efforts to demonstrate the nature and effect of Pappas' spoliation. As an incentive for Pappas to do so, the judge sentenced him to two years in prison should he fail to pay.

What This Means for Businesses Potentially in Litigation with Relevant ESI

While the facts of *Victor Stanley* may be uniquely egregious, both in the scope of the ESI destruction involved and the amount of evidence demonstrating that spoliation, it contains notable lessons for all litigants. The duty to preserve ESI is guided by what is reasonable and proportional under the circumstances. Implementation and prudent oversight of a litigation-hold may limit exposure, both by potentially preventing spoliation in the first instance while also protecting a company in the event that some ESI is ultimately lost.

For Further Information

If you have any questions about this *Alert*, please contact any of the [attorneys](#) in our [Trial Practice Group](#) or the attorney in the firm with whom you are regularly in contact.

Note

1. *Victor Stanley, Inc. v. Creative Pipe, Inc.*, 2010 U.S. Dist. LEXIS 93644 (D. Md. Sept. 9, 2010).