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**Executive Summary of U.S. District Court Case 2:05-cv-70404-RHC-SDP: PML North America, LLC v. Hartford Underwriters Insurance Company, ACG Enterprises of NC Inc., and John E. Gilchrist d/b/a/ RTP Insurance & Financial Associates of Durham, NC**

*This federal civil case demonstrates the ability of advanced technology to provide evidence of fraud and discovery violations. With today's computer-forensic capabilities, legal professionals and the judiciary have a powerful resource to obtain credible, data-driven evidence for civil and criminal cases. Spectrum Computer Forensics and Risk Management LLC, based in Franklin, Michigan, is a leading provider in this emerging area within the legal field. This case demonstrates the increasing importance of digital discovery and computer forensics in the processes of discovery and expert testimony.*

**The Case:**

On December 20, 2006, the Honorable Robert H. Cleland issued an Opinion from the United States District Court for the Eastern District of Michigan, Southern Division. In this, OPINION AND ORDER GRANTING PLAINTIFF'S "MOTION FOR JUDGMENT BY DEFAULT AND PARTIAL SUMMARY JUDGMENT AGAINST DEFENDANT ACG ENTERPRISES OF NC, INC.", Judge Cleland made critical rulings in the realm of e-discovery for all litigators who may argue in this district.

As with similar Opinions being made with mounting frequency across the Federal and State courts, this one adds to the body of case law driving an increasing level of scrutiny and rigor in the discovery and preservation of electronic information. Arriving in near tandem with the revised Federal Rules of Civil Procedure, Judge Cleland's Opinion increases the level of urgency needed by attorneys to have a robust response to litigation involving any level of electronic information. Following below is a 'Cliff's Notes'-style summary of this opinion, including commentary from Spectrum Computer Forensics and Risk Management LLC's founder, J. Stott Matthews, whose work played an important role in the case and resulting Opinion.

### **The Complaint:**

The challenge was to determine who produced fraudulent certificates of workers' compensation insurance provided to the Plaintiff. Though initially involving three co-defendants, including The Hartford Insurance Company, the matter quickly focused on the two co-defendants from Durham NC involved in the insurance-brokering process:

- ACG Enterprises of NC, Inc" ("ACG"); and
- RTP Insurance & Financial Associates ("RTP").

As stated in the Opinion of Judge Cleland: "The origin of the fraudulent letter and certificates of insurance is the key factual question of the complaint." The Plaintiff looked to the co-Defendants: ACG pointed the guilty finger at RTP with RTP responding in kind.

### **The Complaint Driver:**

Workers' compensation insurance was clearly needed "when a significant claim by ... [the Plaintiff] for a worker's closed-head injury occurred." Though the claims were submitted to the underwriter, The Hartford, Hartford responded no such coverage existed. This was in contrast with documents faxed to the Plaintiff, showing coverage with Hartford as the underwriter and ACG and RTP as the agents. Not surprisingly, whoever was the ultimate source of these fraudulent certificates was not forthcoming in declaring their ownership.

### **The Judgement:**

As regards the Default Judgment, "By depriving the other parties and the court of necessary discovery, ACG has fundamentally hampered the ability of a full and fair presentation of... [the Plaintiff's] claims. Consequently, ACG should lose its ability to defend against ... [the Plaintiff]."

The Partial Summary judgment was rendered, in part, as follows: "...[the Plaintiff] uncovered evidence that... presents no issue of material fact concerning whether ACG was involved in either the creation or the storage of the fraudulent documents that are at the heart of this case."

### **Discovery Issues:**

Not unlike Judge Scheidlin in *Zubulake v UBS Warburg* or Judge Maass in *Coleman Holdings v Morgan Stanley*, Judge Cleland's Default and Partial Summary judgments were based in some measure from the loss of discoverable information relating to Defendant ACG and identified by Spectrum.

Based on Spectrum's analysis and reporting of the data acquired during the inspections of the Defendant's computer systems, "Plaintiff filed a motion to compel against ACG, alleging noncompliance" and "(t)he court granted Plaintiff's motion to compel and ordered production of a specifically identified hard drive..., a "thumb-drive" ..., backup target disks, and Brown's (a co-defendant) home laptop computer." These various digital storage devices represented a potentially enormous source of case-relevant data.

Though the home laptop was provided, the other digital-storage devices were not and were more likely critical to the matter. As Judge Cleland states, "More importantly, the loss of potentially relevant discoverable information is great. The lack of available discovery is total for the damaged drive that is inoperable, the unlocated drives and the reformatted drive. The situation is striking given the general duty of litigants to avoid spoliation of evidence from the moment that a party knows or should reasonably know that there is a potential for litigation."

To put it simply in the words of Judge Cleland: "Such evidence as has been uncovered points to Defendant ACG, which, the evidence also shows, is responsible for the destruction or loss of other critical evidence."

### **Lessons Learned:**

As this case has clearly shown, important benefits can accrue from the collaborative efforts of Spectrum, an industry leading digital-discovery and computer-forensics provider. Many of

the discovery issues and case-turning findings arose as a result of the computer-forensic analysis of the computers used by the Defendants. Most importantly, key elements leading to these Default and Partial Summary judgments would not have been available through the traditional e-discovery process.

Ultimately, the success of this case rests with the very skillful and determined efforts of the Plaintiff's counsel, Butzel Long, together with the Judge, the Honorable Robert H. Cleland, who is clearly savvy in today's increasingly digital-heavy discovery environment.

In closing, the type of summary provided above cannot replicate all the important arguments, references, and nuances present in a complete Opinion. Be sure to read the entire Opinion at Spectrum's website: [www.spectrumforensics.com](http://www.spectrumforensics.com).

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