

Sanctions Against Law Firm Survive Appeal

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Although it succeeded in avoiding a motion to strike its answer and affirmative defenses on behalf of defendant General Motors Corporation, the Albany law firm of Thorn, Gershon, Towne, Tymann & Bonnani still faces a sanction of \$10,000 for failing to disclose to the trial court that it had located and purchased a motor vehicle involved in an accident which caused disastrous injuries to the plaintiff. *Jones v. General Motors Corporation*, App. Div. 3rd Dept., (# 88535, Oct. 4, 2001).

Plaintiff Jones was driving a 1998 Chevrolet Corsica. The car went off the road, rolled into a ditch and overturned. Jones was thrown from the car and is now a paraplegic. Jones has no memory of the accident, but he and several others familiar with the car have stated that the car's hood latch mechanism failed on several occasions prior to the accident. On each occasion, the hood opened while the car was in motion. Jones sued, alleging that the accident and his injuries occurred because the hood opened while the car was in motion.

The Thorn law firm moved for summary judgment. Prior to the motion, the firm had purchased the car from an auto parts company which had previously bought the car from the liability insurer. The firm did not disclose to the court when it brought the motion that it had the car or that its expert had inspected the car. The court granted the motion for summary judgment. On appeal by new counsel for plaintiff Jones, the Appellate Division reversed and remanded.

Before trial, plaintiff moved for an order striking defendant's answer and affirmative defenses based on spoliation of evidence. Plaintiff alleged that the hood latch mechanism had been altered while the car was in defendant's control and that the crushed roof line of the vehicle had been altered or lifted by defendant. The lower court denied plaintiff's motion but granted sanctions against the Thorn law firm for its failure to disclose that it had the car, especially in light of the fact that the judge who granted defendant's motion for summary judgment was led to believe that the car had been destroyed.

The lower court denied plaintiff's motion to strike. On appeal, the Appellate Division affirmed on the ground that the lower court had not abused its discretion in reviewing the pleadings. In the process, it also affirmed the assessment of sanctions against the Thorn firm. The court said, "It is well settled that 'courts have discretion to impose sanctions under CPLR 3126 when a party intentionally, contumaciously or in bad faith fails to comply with a discovery order or destroys evidence prior to an adversary's inspection,'" quoting *Puccia v. Farley*, 261 AD2d 83.