JEFFREY BREAUX

VERSUS

INDUSTRIAL DIESEL SERVICE LLC, HOUSTON SPECIALTY INSURANCE COMPANY AND PHILLIP LOUIS BROUSSARD

NO. 25-C-254

FIFTH CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA

July 25, 2025

Linda Tran
First Deputy Clerk

IN RE JEFFREY BREAUX

APPLYING FOR SUPERVISORY WRIT FROM THE TWENTY-NINTH JUDICIAL DISTRICT COURT, PARISH OF ST CHARLES, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE CONNIE M. AUCOIN, DIVISION "C", NUMBER 93,852

Panel composed of Judges Fredericka Homberg Wicker, Jude G. Gravois, John J. Molaison, Jr., E. Adrian Adams, Pro Tempore, and Timothy S. Marcel

WRIT GRANTED; JUDGMENT REVERSED

In this case arising from an automobile rear-end collision, plaintiff Jeffrey Breaux seeks supervisory review of a May 8, 2025 judgment of the trial court granting defendants' Motion for Spoliation Sanctions, and prohibiting Mr. Breaux from introducing any evidence at trial related to surgery performed on his right ulnar nerve or the costs associated with that surgery. For the following reasons, this writ is granted and the judgment of the trial court is reversed.

BACKGROUND

This case arises out of an October 19, 2023 automobile accident in which a vehicle owned by defendant Industrial Diesel Service and operated by defendant, Mr. Broussard, rear-ended the vehicle owned and operated by Mr. Breaux. Mr. Breaux alleges that he had both hands on the steering wheel and

the air-bag did not deploy when he was rear-ended. In his petition for damages filed on February 21, 2024, Mr. Breaux alleges that he sustained serious and disabling injuries to his neck, back, and spine, as well as mental anguish and other injuries to his body, including emergency corrective back surgery days following the accident. Mr. Breaux specifies the costs of the necessary medical treatment as part of his sustained damages.

In their answer to the petition, defendants acknowledged that the accident occurred, but denied liability and denied that any negligence on their part proximately caused plaintiff's injuries. Discovery proceeded. Defendants propounded interrogatories and requests for production that plaintiff answered on June 7, 2024.

In his answers to defendants' interrogatories, plaintiff identified the doctors and other medical providers where he had received treatment, pre-accident injuries, previous employers, and other usual information. Plaintiff's answers also included the following:

> **INTERROGATORY NO. 17:**
>
> Please state the full amount of all medical expenses you have incurred and the amount charged by each health care provider; state whether said charge has been paid and, if so, by whom.
>
> **ANSWER TO INTERROGATORY NO. 17:** Plaintiff objects to this interrogatory as premature. Plaintiff is still undergoing treatment and will likely require further surgery as a result of the collision made the basis of this suit. Subject to this objection: please see all medical and other treatment bills attached to Plaintiff's response to Defendants' Request for Production. In addition, Plaintiff will supplement this response in accordance with the Code of Civil Procedure and the Court's Scheduling Order.
>
> **INTERROGATORY NO. 18:**
>
> Please identify all damages you have sustained both by type of injury/damage and the dollar value for each. Additionally, please state whether any surgery has been recommended, and if so, please state the type of surgery recommended, the physician who recommended the surgery, and the date on which the surgery is scheduled. **(The purpose of this Interrogatory is not only to more fully ascertain the nature and extent of the claimed injuries and damages, but also to preserve necessary evidence for trial, including but not limited to, preservation through an**

Independent Medical Examination being conducted prior to surgery.) (Emphasis in original)

ANSWER TO INTERROGATORY NO. 18: Please see all medical and billing records attached to Plaintiff's responses to Defendants' Requests for Production. In addition, Plaintiff will supplement this response in accordance with the Code of Civil Procedure and the Court's Scheduling Order.[1]

REQUEST FOR ADMISSION NO. 4

Admit or deny that you are not scheduled for any surgery.

RESPONSE TO REQUEST FOR ADMISSION NO. 4: Denied.

REQUEST FOR ADMISSION NO. 5

Admit or deny that a doctor has not related the need for surgery for an injury caused by the accident made the basis of this litigation.

RESPONSE TO REQUEST FOR ADMISSION NO. 5: Denied.

In multiple other responses to defendants' requests for production of hospital and medical records, plaintiff stated that he was still undergoing treatment for injuries sustained during the collision. Plaintiff contemporaneously produced many medical records detailing his medical treatments with multiple providers. These documents, including doctor's reports from October 2023 shortly after the accident up until May 23, 2024, just before the filing of the answers to defendants' production requests, show that Mr. Breaux experienced pain in his neck and back, as well as numbness, tingling, and pain in his right and left hands. The documents report a worsening of Mr. Breaux's symptoms, including worsening of numbness in his right hand.

Defendants' counsel and plaintiff's counsel exchanged emails regarding these discovery responses. On June 19, 2024, plaintiff's counsel stated, "There is no surgery presently scheduled, though [Mr. Breaux] is getting regular

[1] Defendants' claim Mr. Breaux never objected to Interrogatory No. 18; however, this claim disregards plaintiff's general objections at the beginning of the interrogatories which state, "JEFFREY BREAUX objects to the discovery requests to the extent they purport to require supplementation beyond that required by the Louisiana Code of Civil Procedure and/or the court's scheduling order … [t]hese general objections apply to each and every response provided hereafter, [sic] as if they were fully set forth in each specific response."

treatment from Dr. Lonseth and Dr. Malucci … Also, he has a new referral to see Eric George related to the nerve issues in his hand."

On July 2, 2024, a discovery dispute arose over defendants' subpoena of all of Mr. Breaux's medical records from his private health insurer. On July 17, 2024, plaintiff filed a motion to quash or limit this subpoena as overly broad. This dispute expanded to subpoenas issued by defendants to other medical providers for which plaintiff filed an additional motion to quash. Plaintiff's motions were denied by the trial court on November 12, 2024.

On July 18, 2024, in a letter to plaintiff's counsel, Dr. Eric George of Hand Surgical Associates reiterated Mr. Breaux's reports of pain, numbness, and tingling in his extremities that were progressively worsening. Dr. George performed a physical examination and reviewed Mr. Breaux's medical records (the same records provided in plaintiff's responses to defendants' requests for production) and recommended that Mr. Breaux undergo a right ulnar nerve decompression surgery. The surgery was not scheduled at that time, but Dr. George stated that Mr. Breaux was "anxious to proceed" and that the surgery would be scheduled at his convenience. The surgery occurred on September 9, 2024. There is no indication in the record as to when the surgery was scheduled or when plaintiff's counsel was made aware of the surgery date.

On February 6, 2025, defendants filed a Motion for Spoliation Sanctions, wherein they requested that the court bar all argument and evidence at trial of Mr. Breaux's "elbow injury," or, alternatively, to bar argument and evidence about his elbow surgery and related costs.[2] Defendants argued that plaintiff did not identify Dr. Eric George or Hand Surgical Associates as a medical provider

[2] In support of this motion, defendants attached as exhibits: plaintiff's petition for damages, plaintiff's discovery responses, the July 18, 2024 letter from Dr. George, a surgical report, a January 17, 2025 email, the subpoena to Mr. Breaux's insurer, and the November 12, 2024 judgment denying plaintiff's motion to quash. These exhibits were introduced and admitted at the hearing on the Motion for Spoliation Sanctions.

in his June 7, 2024 answers to discovery. Defendants additionally argued that Mr. Breaux did not state in his answers to defendants' interrogatories that surgery had been recommended and plaintiff failed to timely supplement his response as stated in his answers.

Citing *Roussell v. Circle K Store, Inc.*, 21-0582, p. 3 (La. App. 1 Cir. 12/22/21), 340 So.3d 52, defendants further argued that Mr. Breaux's seeking surgical treatment for the compressed nerve in his elbow was the same as a convenience store's repainting a parking lot following a trip-and-fall accident, and that "plaintiff's refusal to submit to a pre-surgery IME has forever deprived Defendants of the ability to fully evaluate the extent and causation of his alleged elbow injuries and need for surgery." Defendants requested that the court exercise its power under La. C.C.P. art. 191 to "exclude evidence that plaintiff injured his elbow and needed ulnar nerve decompression surgery." Defendants cited no cases from this Circuit in support of their legal arguments.

Plaintiff filed an opposition to defendants' motion wherein he argued that defendants were aware of the nerve issues in Mr. Breaux's hands, were told that Mr. Breaux's medical treatment was ongoing and would likely require future surgeries, and were told of Mr. Breaux's referral to Dr. Eric George, who is regarded as a pre-eminent hand surgeon in the region. Plaintiff argued that defendants never requested an IME and he should not be sanctioned for failing to attend an IME when none was requested. Plaintiff also argued that sanctions should not be imposed because defendants could not prove they were prejudiced by not having a pre-surgery IME. In support of this argument, plaintiff included an affidavit from Dr. George explaining that the pre-surgical medical records documenting Mr. Breaux's injuries (the same ones provided in the June 7, 2024 responses to discovery) were and are sufficient to diagnose and treat Mr. Breaux.

The hearing on defendants' motion for spoliation sanctions was held on April 23, 2025. Plaintiff's counsel argued that the side comment thrown into defendants' Interrogatory No. 18 should not be treated the same as a court order instructing Mr. Breaux to submit to an IME, and a request for the production of documents and a request for an IME are not equivalent. Plaintiff reiterated the argument that defendants failed to show how their inability to conduct a pre-surgery IME prejudiced their case. Counsel for defendants stated, "I don't know what an IME would have shown if we would have got it." Following the conclusion of arguments, the parties' documentary evidence was introduced and admitted to the record.

In ruling from the bench, the trial judge granted defendants' motion, stating: "I am going to grant the sanctions for spoliation. As a result, I am going to preclude any evidence of the surgery by Dr. George on the plaintiff. There will be no discussion of the surgery. There will be no damages for the cost associated with the surgery admitted in the trial of this matter." In those oral reasons given from the bench, the trial court expressly referenced the factors stated in *Jackson v. Family Dollar Stores of Louisiana, Inc.*, 3:19-CV-00388, 2020 WL 6092343 (W.D. La. Oct. 15, 2020) as the basis of her ruling. ("The Court finds, under the Jackson factors, the degree of fault of the party who altered or destroyed the evidence weighs in favor of the Defendant…")

The May 8, 2025 written judgment granting defendants' motion states, "[p]laintiff is prohibited from introducing evidence at trial related to the right ulnar nerve surgery, or the costs associated with that surgery." Mr. Breaux seeks supervisory review of this judgment.

DISCUSSION

We begin by observing that this is a partial final judgment subject to immediate appeal. La. C.C.P. art. 1915 (A)(6) states that a final judgment may

be rendered and signed by the court when the court imposes sanctions or disciplinary action pursuant to La. C.C.P. art. 191. Nevertheless, because the judgment has not been properly certified by the trial court, and because the writ application and defendants' opposition provide an otherwise complete record, the case may be considered under this Court's supervisory jurisdiction.

Our discussion proceeds in two parts. We begin with a discussion of the trial court's legal error in applying federal jurisprudential doctrine to a Louisiana state law case, and then proceed to a *de novo* review to determine whether the evidence presented supports the imposition of sanctions for either a failure to supplement discovery responses or spoliation of evidence under Louisiana law.

Legal Error

As noted *supra*, in reasons issued from the bench, the trial court's ruling was based on an application of the multifactor test articulated in *Jackson v. Family Dollar Stores of Louisiana, Inc.*, 3:19-CV-00388, 2020 WL 6092343 (W.D. La. Oct. 15, 2020). The "factors" referred to by the trial court as the "Jackson factors" actually originate in the Federal Third Circuit case *Schmid v. Milwaukee Elec. Tool Corp.*, 13 F.3d 76, 79 (3rd Cir. 1994).

The "Jackson factors" were first applied by a Louisiana federal court in *Menges v. Cliffs Drilling Co.*, CIV. A. 99-2159, 2000 WL 765082 (E.D. La. June 12, 2000). In her written opinion, Judge Vance in *Menges* articulated these factors:

> The seriousness of the sanctions that a court may impose depends on the consideration of: (1) the degree of fault of the party who altered or destroyed the evidence; (2) the degree of prejudice suffered by the opposing party; and (3) whether there is a lesser sanction that will avoid substantial unfairness to the opposing party and, where the offending party is seriously at fault, will serve to deter such conduct by others in the future.

In *Menges*, the defendant sought to have evidence of the plaintiff's back surgery excluded from trial because the plaintiff failed to notify the defendant of the

surgery beforehand, arguing that failure to notify resulted in spoilation of evidence. Judge Vance, applying these factors, found that the plaintiff had not intentionally destroyed evidence and the plaintiff's failure to notify the defendant of the surgery did not amount to spoliation of the evidence.[3]

Federal courts in Louisiana, applying this jurisprudential doctrine created under the Federal Rules of Civil Procedure, have consistently denied defendants' motions to exclude or limit evidence where plaintiff failed to provide advance notice of a surgical procedure. *See Mitchell v. Lucas*, CIV. A. 03-2646, 2004 WL 1774616 (E.D. La. Aug. 9, 2004) (Court found that the evidence was not intentionally destroyed even though secretary made error when notifying defense counsel of plaintiff's surgery date; court also found that the degree of prejudice to the defendant to be limited because plaintiff's condition was well documented and preserved by ample medical records and depositions of his treating physicians, including MRIs and CT scans that can be reviewed by physician of defendant's choosing.); *Collongues v. State Farm Auto. Ins. Co.*, CIV. A. 09-3202, 2010 WL 103878 (E.D. La. Jan. 7, 2010) (Court found that defendants had ample time (four months) to request an IME, but failed to do so. "Defendant's failure to investigate plaintiff's condition and to require an IME prior to the surgery negates the notion that plaintiff intentionally destroyed evidence by undergoing surgery."); *Savarese v. Pearl River Nav., Inc.*, CIV. A. 09-129, 2010 WL 1817758 (E.D. La. Apr. 30, 2010) (Where an injured plaintiff did inform defense that he would undergo surgery, but did not specify the date,

[3] Concerning this last factor, whether sanctions will deter future conduct, Judge Vance has stated that the "deterrence rationale" is not very compelling because the choice to undergo surgery is different from the choice to destroy written documents, observing that the inherent risk, discomfort, and inconvenience provide a deterrent to undergoing surgery absent a medical need. *Savarese v. Pearl River Nav., Inc.*, CIV. A. 09-129, 2010 WL 1817758 (E.D. La. Apr. 30, 2010). In this case, defense counsel has argued that Mr. Breaux's decision to undergo surgery for his compressed ulnar nerve is the same as the destruction of files. (*BancorpSouth Bank v. Kleinpeter Trace, L.L.C.*, 2013-1396 (La. App. Cir. 10/1/14), 155 So.3d 614, 639), the destruction or damage of videotapes (*Carter v. Hi Nabor Super Mkt., LLC, infra*), and the restriping of a parking lot (*Roussell v. Circle K Store, Inc., supra*.)

the Court found in favor of plaintiff, stating that defense had an opportunity to request an IME.); *Guzman v. Jones*, 804 F.3d 707, 713 (5th Cir. 2015) (Court found no evidence to suggest that plaintiff acted in a manner intended to deceive defendants or that he undertook the surgery with the intent of destroying or altering evidence.); and *Garsaud v. Wal-Mart Louisiana, L.L.C.*, CV 23-4751, 2024 WL 1991574, (E.D. La. May 6, 2024) (In case where plaintiff indicated intent to have corrective knee surgery in her discovery responses, the Court found defendants failed to show that plaintiff acted in a manner intended to deceive defendants or that she undertook the surgery with the intent of destroying or altering the evidence.)

Even in cases where the trial court found clear evidence that the plaintiff intentionally violated an agreement between the parties to submit to a pre-surgery IME, the court limited its sanction to a permissive adverse inference jury instruction, not the exclusion of evidence. *See Young v. Canadian Nat'l/Illinois Cent. R.R. Co.*, 04-CV-88, 2005 WL 8155474 (M.D. La. Sept. 23, 2005) and *Jones*, *supra*.

A review of these cases indicates that the trial court in this cause appears to have applied the *Jackson/Schmid* factors incorrectly in granting defendants' motion. Nevertheless, the trial court's greater legal error was application of a federal evidentiary doctrine on spoliation of evidence that has never been expressly or implicitly adopted before by any Louisiana state courts.

Because of Louisiana's civilian tradition, Louisiana courts must begin every legal analysis by examining the primary sources of law, consisting of the constitution, codes, and statutes; jurisprudence, even when it arises to the level of *jurisprudence constante*, is a secondary law source. *Bergeron v. Richardson*, 20-01409, p. 9 (La. 6/30/21), 320 So.3d 1109, 1116. When a statute specifically disposes of an issue, resort to jurisprudence is unnecessary. *Id*. Louisiana Code

of Civil Procedure Article 1428, not applied by the trial court here, specifically addresses a party's duty to supplement discovery responses. While there is no Louisiana statute that specifically authorizes a trial court to impose sanctions for spoliation of evidence[4], the trial court has also disregarded the spoliation of evidence cases from this Circuit. Such a disregard for Louisiana law is erroneous.

A trial court's imposition of sanctions for discovery violations is subject to appellate review under the abuse of discretion standard. *Mascaro v. Par. of Jefferson*, 10-488 (La. App. 5 Cir. 11/23/10), 54 So.3d 715; *Roccaforte v. Nintendo of Am., Inc.*, 05-239 (La. App. 5 Cir. 11/29/05), 917 So.2d 1143. The abuse of discretion standard is highly deferential to the trial court unless the court exercised its discretion based upon an erroneous view of the law. *Tran v. Collins*, 20-0246, p. 5 (La. App. 4 Cir. 8/20/21), 326 So.3d 1274, 1279, *writ not considered*, 21-01570 (La. 1/12/22), 330 So.3d 619. If the trial court's decision was based on its erroneous application of the law, rather than on a valid exercise of discretion, the trial court's decision is not entitled to deference by the reviewing court. *Lagraize v. Basler*, 20-39 (La. App. 5 Cir. 9/9/20), 304 So.3d 102, 113, *writ denied*, 20-01257 (La. 12/22/20), 307 So.3d 1038; *see In re Strain*, 25-00198, p. 1 (La. 4/15/25), 406 So.3d 415. In light of the trial court's legal error here, this Court now conducts a *de novo* review.

---

[4] In *Carter v. Hi Nabor Super Mkt., LLC*, 13-0529 (La. App. 1 Cir. 12/30/14), 168 So.3d 698, the First Circuit observed that spoliation is an evidentiary doctrine that has been recognized in Louisiana since 1847. It further observed that a trial court has the authority to impose sanctions on a party of spoliation of evidence and other discovery misconduct under both its inherent power to manage its own affairs [La. C.C.P. art. 191] and the discovery articles provided in the Louisiana Code of Civil Procedure [La. C.C.P. art. 1471]. *See also Walker v. Manitowoc Co., Inc.*, 16-897 (La. App. 3 Cir. 10/10/18), 259 So.3d 465. La. C.C.P. art. 191 states, "[a] court possesses inherently all of the power necessary for the exercise of its jurisdiction even though not granted expressly by law."

De Novo Review

The *de novo* review of defendants' motion begins with an examination of plaintiff's duty to supplement discovery responses under La. C.C.P. art. 1428, which defendants and the trial court have conflated with the duty to preserve evidence.

In a civil case, the duty to disclose to one's adversary arises through specific discovery requests. *Wright v. Louisiana Power & Light*, 06-1181, p. 18 (La. 3/9/07), 951 So.2d 1058, 1071. The failure to timely supplement discovery responses, when a duty to do so exists, may trigger sanctions under La. C.C.P. art. 1428. *Guidry v. Savoie*, 15-809, p. 15 (La. App. 5 Cir. 5/26/16), 194 So.3d 1184, 1194, *writ denied*, 16-01218 (La. 10/17/16), 207 So.3d 1064. That Code article states in pertinent part:

> A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except as follows:
> …
> (2) A party is under a duty seasonably to amend a prior response if he obtains information upon the basis of which he knows that the response was incorrect when made, or he knows that the response though correct when made is no longer true and the circumstances are such that failure to amend the response is in substance knowing concealment.

"Knowing concealment" is another term for fraud. (See FRAUD, Black's Law Dictionary (12th ed. 2024)) "A knowing misrepresentation or knowing concealment of a material fact made to induce another to act to his or her detriment … also termed intentional fraud.") Under La. C.C. art. 1953, fraud is a misrepresentation or suppression of the truth made with the intention either to obtain an unjust advantage for one party or to cause a loss or inconvenience to the other. Fraud may also result from silence or inaction.

There is no evidence in this case that plaintiff or his attorneys intended to deceive or conceal the surgery with Dr. George from defendants. At the time

the discovery responses were provided on June 6, 2024, Mr. Breaux was still undergoing treatment and did not have a surgery scheduled at that time. Plaintiff's response to defendants' interrogatories were truthful. In response to emails from defense counsel, plaintiff's counsel on June 19, 2024 did state that Mr. Breaux had a referral to meet with Dr. George. It is irrational to suppose that a party seeking to intentionally conceal a surgery would inform defendants of a consultation with the region's most pre-eminent hand surgeon. Additionally, as noted above, there is no evidence in the record of exactly when the surgery was scheduled or when plaintiff's counsel was made aware of the surgery date. The record does not support a finding that plaintiff "knowingly" or fraudulently concealed his surgery with Dr. George.

We turn next to plaintiff's duty to preserve evidence. As previously noted, while there is no specific statute authorizing a court to impose sanctions for destruction or spoliation of evidence, such authority is considered to be granted under La. C.C.P. art. 191 and La. C.C.P. art. 1471.[5] [6] The theory of spoliation of evidence refers to an intentional destruction of evidence for the purpose of depriving opposing parties of its use. *Temes v. Manitowoc Corp.*, 14-93, p. 11 (La. App. 5 Cir. 12/23/14), 181 So.3d 733, 740; *Desselle v. Jefferson Hosp. Dist. No. 2*, 04-455, p. 16 (La. App. 5 Cir. 10/12/04), 887 So.2d

---

[5] This latter statute is not applicable in this instance because plaintiff did not violate a discovery order of the trial court. The Louisiana Supreme Court has stated that there is a distinction between sanctions available for failure to comply with discovery and the sanctions available for disobedience of court ordered discovery. *Horton v. McCary*, 635 So.2d 199, 203 (La. 1994). It is not clear that the four factors identified by the Louisiana Supreme Court in *Horton* before a trial court grants dismissal or default sanctions pursuant to a violation of La. C.C.P. art. 1471 are applicable to court applied sanctions under La. C.C.P. art. 191. It should be noted that the *Horton* factors are very similar to the *Schmid* factors in that they focus on prejudice to the moving party, the availability of less drastic measures, and the willfulness of the conduct. In the absence of clearer ruling from the Supreme Court, we decline to extend the jurisprudential doctrine of spoliation of evidence by adopting those factors here.

[6] Further, we do not find the Louisiana Supreme Court's decision in *Reynolds v. Bordelon*, 2014-2362, p. 1 (La. 6/30/15), 172 So.3d 589, 592, which concerned an action against a third-party for negligent spoliation of evidence (rather than first-party spoliation) to be directly relevant to this case.

524, 534; *Pham v. Contico Int'l, Inc.*, 99-945, p. 4 (La. App. 5 Cir. 3/22/00), 759 So.2d 880, 882; *Hooker v. Super Products Corp.*, 98-1107, p. 39 (La. App. 5 Cir. 6/30/99), 751 So.2d 889, 910, *writ denied*, 99-2911 (La. 12/17/99), 751 So.2d 880, *and writ denied*, 99-2947 (La. 12/17/99), 751 So.2d 884.

Spoliation of evidence has its roots in the evidentiary doctrine of "adverse presumption," which allows a jury instruction for the presumption that the destroyed evidence contained information detrimental to the party who destroyed the evidence unless such destruction is adequately explained. *Temes, supra*. However, the presumption of spoliation is not applicable when the failure to produce the evidence has a reasonable explanation. *Id*.; *Desselle, supra*; *Pham, supra*; *Hooker, supra*.

Following these cases, defendants here, as movers, had the burden to show (1) that Mr. Breaux intentionally destroyed evidence for the purpose of depriving defendants of its use at trial, and (2) that such destruction was without adequate or reasonable explanation. We address these elements in turn.

Though not clearly articulated by defendants in their motion or at trial, the "evidence" in this case was a compressed nerve in Mr. Breaux's right elbow. This evidence was "destroyed" when Mr. Breaux sought and received medical treatment for the compressed nerve which was causing him pain and loss of sensation in his right hand. Defendants have offered no evidence that plaintiff intentionally sought to deprive them of evidence of his compressed ulnar nerve at trial. On the contrary, the evidence in the record indicates that plaintiff provided many records documenting his medical examinations and injuries to defendants, including his responses to the discovery requests. Upon examination of these medical records, including the notes that Mr. Breaux's condition was worsening and an email from plaintiff's counsel stating that Mr. Breaux was meeting for a consultation with the region's pre-eminent hand

surgeon, defendants elected to have issued additional subpoenas for Mr. Breaux's medical history, rather than request an independent medical examination.

Defendants argue that plaintiff has no rational explanation for the spoliation of evidence by stating "plaintiff has no excuse for failing to notify Defendants about a pending surgery." This argument conflates the duty to supplement with the duty to preserve evidence. Importantly, this argument disregards a very important and perfectly reasonable and adequate explanation for the "destruction" of evidence in this case: plaintiff was experiencing pain and discomfort from a compressed nerve in his elbow and sought medical treating to relieve the symptoms. Given that the medical records provided to defendants on June 7, 2024 indicated that Mr. Breaux's symptoms of pain, numbness, and loss of sensation were worsening, it is unreasonable to expect that Mr. Breaux would delay medical treatment indefinitely for an unscheduled trial date. On the record presented, we find defendants have not met their burden to show there was no reasonable or adequate explanation for receiving medical treatment for his compressed ulnar nerve.

CONCLUSION

Sanctions are punitive in nature and should be granted only after the utmost exercise of judicial discretion following an examination of the particular facts and circumstances of each case in light of the applicable Louisiana law. The trial court legally erred in applying federal rather than Louisiana law when deciding and granting defendants' Motion for Spoliation Sanctions. On *de novo* review, the evidence in the record does not support a finding that plaintiff breached his duty to supplement his discovery responses by knowingly concealing his surgery from defendants. The record also does not support a finding that plaintiff breached his duty to preserve evidence by seeking medical

treatment for his compressed ulnar nerve. Accordingly, this writ is granted and the judgment of the trial court is reversed.

Gretna, Louisiana, this 25th day of July, 2025.

TSM
FHW
JGG

JEFFREY BREAUX

VERSUS

INDUSTRIAL DIESEL SERVICE LLC, HOUSTON SPECIALTY INSURANCE COMPANY AND PHILLIP LOUIS BROUSSARD

NO. 25-C-254

FIFTH CIRCUIT

COURT OF APPEAL

STATE OF LOUISIANA

MOLAISON AND ADAMS, PRO TEMPORE, JJ., DISSENTS WITH REASONS

I respectfully dissent from the majority's decision to grant this writ application. In my view, the trial judge committed no legal error. Rather, she appropriately exercised her broad discretion in managing pre-trial discovery proceedings.

The record, as the majority recounts, shows that after undergoing spinal surgery for injuries sustained in the accident, the plaintiff continued to complain of right-hand pain and sought treatment from hand surgeon Dr. Eric George. On June 7, 2024, the plaintiff answered the defendants' interrogatories, stating that he continued to receive treatment and "will likely require further surgery." Less than two weeks later, on June 19, 2024, the plaintiff's counsel emailed the defense, stating that "there is no surgery presently scheduled" and that the plaintiff had "a new referral to see Eric George related to the nerve issues in his hand."

Less than a month after that representation, Dr. George sent a letter dated July 18, 2024, to the plaintiff's counsel, stating that he had examined the plaintiff and that the plaintiff was anxious to proceed with the recommended ulnar nerve decompression surgery which would be scheduled at the plaintiff's convenience. Plaintiff's counsel failed to notify defense counsel that Dr. George had

recommended, scheduled, or ultimately performed the surgery on September 10, 2024.

Defense counsel learned of the surgery only after the fact and moved for sanctions, arguing that the lack of timely notice deprived the defense of the opportunity to request an Independent Medical Examination (IME). At the hearing, the trial judge directly asked plaintiff's counsel why he failed to notify defense counsel of the surgery after his June 19, 2024 representation. Plaintiff's counsel replied that the defense had no right to an IME absent a court order and claimed that no one had asked for an IME before the surgery. He further stated that the plaintiff sought additional treatment because his fingers were going numb and admitted, "I don't know how long it took us to have notice of that."

Defense counsel responded that interrogatory number eighteen specifically asked whether any surgery had been recommended and, if so, by whom—precisely to preserve the opportunity to request an IME before any surgery. Counsel emphasized that without knowledge of a recommendation, he could not request an IME.

The trial judge noted the short timeline between the June 19, 2024 email and the July 18, 2024 recommendation for surgery. She emphasized the plaintiff's ongoing duty to supplement discovery responses and found that Dr. George had informed the plaintiff's counsel—not the plaintiff—about the consultation and surgery. She concluded that plaintiff's counsel had eliminated the defense's ability to request an IME before the surgery by failing to disclose the recommendation or scheduled procedure. The court ultimately ruled that the plaintiff could testify about the injury to the right ulnar nerve but barred any evidence related to the surgery or its cost. The May 8, 2025, judgment formalized this ruling.

Under Louisiana law, spoliation of evidence refers to the intentional destruction of evidence intended to deprive the opposing party of its use in

litigation. *Walker v. Manitowoc Co., Inc.*, 16-897 (La. App.3 Cir. 10/10/18), 259 So.3d 465, 478. Louisiana Code of Civil Procedure article 191 authorizes trial courts to impose sanctions even without a discovery order because destruction of evidence interferes with the court's ability to administer justice. Article 191 states that a trial court "possesses inherently all of the power necessary for the exercise of its jurisdiction even though not granted expressly by law." *Id*.

Furthermore, article 1428 imposes a continuing duty to supplement discovery responses. When a party fails to update a response that was once accurate but has since changed, the court may impose sanctions, including excluding testimony. *Guidry v. Savoie*, 15-809 (La. App. 5 Cir. 5/26/16), 194 So.3d 1184, 1193, *writ denied*, 16-01218 (La. 10/17/16), 207 So.3d 1064. The trial court retains significant discretion in deciding whether to impose such sanctions, and an appellate court will not overturn that decision absent a clear abuse of discretion.

Here, the trial judge concluded that by failing to disclose the surgery recommendation, plaintiff's counsel deprived the defense of its ability to obtain an IME—a critical form of evidence regarding the necessity of the surgery. The record supports this finding. Dr. George sent the July 18, 2024 letter directly to plaintiff's counsel, advising that the plaintiff would need "an ulnar nerve decompression with submuscular transposition," to be scheduled at the plaintiff's convenience. The plaintiff's writ application includes this letter. The trial judge reasonably concluded that the conduct effectively destroyed the defense's ability to gather relevant medical evidence.

Although this case does not fit squarely within the traditional spoliation framework, I find no abuse of discretion in the trial court's decision to exclude evidence of the surgery and its cost. The trial judge had ample authority under

Louisiana law to issue this sanction in light of the failure to supplement discovery and the resulting prejudice to the defense.

For these reasons, I find no legal error and no abuse of discretion by the trial court. I would deny the writ application.

JJM
EAA

FIFTH CIRCUIT
101 DERBIGNY STREET (70053)
POST OFFICE BOX 489
GRETNA, LOUISIANA 70054
www.fifthcircuit.org

(504) 376-1400
(504) 376-1498 FAX

NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **07/25/2025** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

Curtis B. Pursell

CURTIS B. PURSELL
CLERK OF COURT

25-C-254

E-NOTIFIED

29th Judicial District Court (Clerk)
Honorable Connie M. Aucoin (DISTRICT JUDGE)
Erin B. Saucier (Relator)
Paul J. Politz (Respondent)
Caleb H. Didriksen, III (Relator)
Carl A. Woods, III (Relator)
Derrick A. Jusczak (Respondent)

MAILED

D. Scott Rainwater (Respondent)
Attorney at Law
1555 Poydras Street
Suite 2000
New Orleans, LA 70112

7012 1010 0003 7112 5430

CERTIFIED MAIL™ RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com®

OFFICIAL USE

Postage	$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	

Postmark Here

To D. Scott Rainwater
Street, Apt. No., or PO Box No. Attorney at Law
1555 Poydras Street
Suite 2000
City, State, ZIP+4® New Orleans, LA 70112
25-C-254 07-25-25

PS Form 3800, August 2006 See Reverse for Instructions

SENDER: *COMPLETE THIS SECTION*

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

D. Scott Rainwater
Attorney at Law
1555 Poydras Street
Suite 2000
New Orleans, LA 70112
25-C-254 07-25-25

9590 9402 2434 6249 3643 28

2. Article Number *(Transfer from service label)*

7012 1010 0003 7112 5430

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X ☐ Agent ☐ Addressee

B. Received by *(Printed Name)* C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☑ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☑ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Mail Restricted Delivery
00)

PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt