

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

EARLY BIRD CAR WASH, INC.,	: NO. CV-2021-00448
MR. BIRD'S CUSTOM CAR WASH	:
EQUIPMENT, LLC, and MICHAEL J.	:
EARLY,	:
Plaintiffs,	:
	:
vs.	:
	: CIVIL ACTION - LAW
DEAN PIERMATTEI and RHOADS &	:
SINON, LLP,	:
Defendants.	: Motions for Sanctions

OPINION AND ORDER ON MOTION FOR RECONSIDERATION
FILED SEPTEMBER 19, 2025

This matter came before the Court on both October 29, 2024, and on February 12, 2025, on Plaintiffs' Supplemental Motion for Sanctions and to Extend Discovery Deadline, filed August 30, 2024, and Defendants' Countermotion for Sanctions, filed September 24, 2024. Counsel for all parties appeared, along with a representative of the Plaintiffs.

BACKGROUND:

Although the Complaint was filed on May 17, 2021, this matter has been mired in contentious discovery. Discovery disputes culminated in the Opinion and Order of the Honorable Eric R. Linhardt dated September 18, 2023, and a subsequent deficiency letter from Plaintiff's counsel to Defendants dated September 25, 2023. The discovery dispute continued, and the parties sought further judicial intervention. That resulted in the scholarly twenty-one (21) page Opinion and Order of the Honorable Eric R. Linhardt filed May 13, 2024. Thereafter, Plaintiffs' counsel sent to the Defendants another deficiency letter dated June 18, 2024. The Opinion and Order of May 13, 2024, notwithstanding, the parties have filed the Motions referenced above, together with extensive briefs.

After the hearing conducted on October 29, 2024, the Court entered its Opinion and Order dated and filed on October 31, 2024. In that Order, this Court observed that Plaintiffs' claims of legal malpractice are directed against a defunct law firm, and that Plaintiffs seek

electronic discovery from long-decommissioned computer file servers. The Court speculated that at least some material sought by the Plaintiffs has been lost to the passage of time.

In the Order of October 31, 2024, the Court directed that, on or before November 15, 2024, Plaintiff's counsel was to identify to Defendant's counsel particular documents sought, particular interrogatory questions served but not yet answered, and particular areas of inquiry for which a deposition of an authorized representative of Defendant was to occur. The Order further directed Defendant's counsel to respond on or before December 20, 2024, providing documents and providing answers to interrogatories, unless the responses were subject to privilege. The Order further directed Defendant's counsel to provide the name and professional address of each witness who is in a position to provide a material answer to each area of inquiry.

The Order of October 31, 2024, directed the parties to cooperate in good faith in an effort to complete discovery on or before January 31, 2025, and scheduled an evidentiary hearing on the cross-motions for sanctions for 9:00 a.m. on February 12, 2025, limited to the claims of the parties for sanctions.

On February 12, 2025, Plaintiffs introduced the testimony of Phillip J. Binotto, Esquire. Further, Plaintiffs introduced Exhibits 1 and 2 in support of Plaintiffs' Supplemental Motion for Sanctions. Attorney Binotto has extensive experience in law office management (Notes of Testimony, hereinafter N.T. 8-9). He credibly testified that his examination of law firm hourly rates conducted in connection with litigation in the Western District of Pennsylvania led him to conclude that "rates are all over the - - all over the place. It depends on the size of the law firm and the complexity of the case." (N.T. 15-17).

Attorney Binotto further testified that, for associate attorneys that are between two and five years, the average hourly rates are between \$300 and \$400 per hour. For senior attorneys and mid-level partners, with approximately ten years of experience, the rates are between \$400 and \$600. For partners with twenty years of experience, the rates are between \$500 and \$800 per hour. (N.T. 17). Attorney Binotto testified that he regarded this litigation as a complex matter (N.T. 18). Attorney Binotto testified that the billing rates charged by Plaintiff's counsel

in this matter as reflected in Plaintiff's Exhibit P-2 reflect billing rates "between 20 and 25 percent lower than what I believe the market is in Pittsburgh." (N.T.18).

On cross-examination, Attorney Binotto conceded that he did not appear to offer any opinion as to whether Defendants reasonably responded to discovery requests in a timely manner, nor did he review any electronic material secured from Defendants' computer servers, nor did he offer any opinion regarding whether boxes of documents identified by Attorney Stephanie DiVittore at her deposition had been produced. (N.T. 22-23). Attorney Binotto testified that he "read almost every entry" of the billing statements of Plaintiffs' counsel, and that "they relate to discovery and efforts to obtain discovery." Attorney Binotto was directed at an entry in a billing statement on March 10, 2023, and asked whether he considered the activity listed as "Revised second set of requests for admissions directed to Dean Piermattei" as being an activity "charged in the everyday course of discovery? Is that an entry that would be charged by an attorney in the everyday course of discovery?" Attorney Binotto responded "I would - -I would think so, yes. It deals with the requests of admissions, which to me, is part of discovery under the rules." (N.T. 24-25). Defendant's counsel then asked Attorney Binotto whether the line items in Plaintiff's Exhibits totaling \$196,000 "relate solely to the charges incurred after alleged deficiencies in the discovery, alleged improper conduct in discovery, or would some of these entries at least be charged again, in the ordinary course of discovery by everyday lawyers?" Attorney Binotto responded that "My understanding is that these - - these entries these time entries represent everything pertaining to discovery, whether it be in the ordinary course or whether it be to try to correct deficiencies or obtain sanctions in the extraordinary course." (N.T. 25).

On examination by the Court, the Court inquired "I believe it is your testimony that you were not tasked to analyze whether legal efforts were as a result of a violation of a court discovery order or for any other reason. Did I get that right?" To which Attorney Binotto responded "Yes, Your Honor." At the conclusion of Attorney Binotto's testimony, the Court received oral argument on scheduling issues, and entered its Order of February 12, 2025, continuing the hearing to a later date and time.

The Court conducted the continued hearing on May 12, 2025. At that hearing Plaintiffs introduced an amended Exhibit 2 as P-2A (N.T. 6). Plaintiff introduced the testimony of Mark A. Sabados, Esquire. Attorney Sabados identified P-2A as billing statements for the period of February 2023 to April 2025 (N.T. 8). Attorney Sabados testified that the fees reflected in Exhibit P-2A total \$232,234.50, and that, with regard to the activities reflected in P-2A, he regarded all of them as “related to any work done regarding Defendants’ not producing discovery or not fully answering discovery.” (N.T. 10-11).

In response to questioning by the Court, Attorney Sabados testified that his examination of P-2A was not to identify activities related to seeking complete answers to discovery as opposed to seeking compliance with a discovery order (N.T. 12). In response to a statement by the Court to the effect that the activities reflected in P-2A appear to involve both seeking complete answers to discovery and seeking compliance with a discovery order, Attorney Sabados answered “I think you’re right.” (N.T. 14). Thereafter, Plaintiff rested (N.T. 15).

Defendants introduced the testimony of Peter Mansmann, Esquire, who identified himself as the chief executive officer of Precise, Inc. Mansmann testified that he has experience in hundreds of matters involving discovery efforts (N.T. 18). He testified that the law firm of Rhoads & Sinon had ceased doing business, and decommissioned its computer server in approximately 2018. The server was sent to Iron Mountain Storage for safekeeping (N.T. 18-19). A representative of Rhoads & Sinon arranged to have the server shipped to the law firm of Barley Snyder for examination. Based upon the age of the server, Mansmann determined that it would not be possible to recover data from the server at that site. He located a document from CTI stored with the server, which contained instructions for turning the server on (N.T.20).

With that document, Mansmann confirmed that the server was shut down in February of 2019 (N.T. 21). Mansmann testified that the server was moved to Pittsburgh from Barley Snyder. Thereafter, Precise, Inc., experienced difficulty getting the server to turn back on. For that reason, they consulted several other vendors, without success (N.T. 23-25). Through continued efforts, Precise, Inc., was able to secure access to emails on the server. Through a

search of emails containing key words, Precise, Inc., was able to identify and download 514 documents, comprising the aggregate of 2,500 pages of material (N.T. 26-30).

Mansmann testified that he worked with both an attorney for Defendants and an attorney for Plaintiff, Dave Weber, Esquire, to establish an electronically stored information (ESI) protocol. They conducted several meetings over many months and arrived at an ESI protocol (N.T. 32-33). Searches conducted under the ESI protocol resulted in the identification of 489 documents. In total, approximately 30,000 documents were reviewed or filtered (N.T. 35). Of the total 30,000 documents reviewed or filtered, 9,000 were identified as unlikely to be responsive to Plaintiffs' requests. Precise, Inc., continued to keep the downloaded data available to meet any additional search requests from Plaintiffs' counsel. Total billing to the Defendants from Precise, Inc., on this project was approximately \$92,500 (N.T. 38).

Defendants' counsel inquired of Mansman whether he saw anything that suggested that any data formerly on the server was destroyed. Mansmann testified that he did not, but testified "Keeping in mind that we were only able to access half the server, the emails . . . I did not see any issue of the spoiled documents on the server that we didn't access or search (N.T. 40). Defendants' counsel inquired whether earlier retrieval of the server would have mitigated or eliminated any of the technical difficulties that your team encountered during the recovery and restoration process. Mansmann testified "There's no way of knowing whether or not collecting and accessing the servers earlier would have made a difference or not"(N.T. 41-42).

On cross-examination Mansmann was asked whether inaction by the Defendants caused a loss of information that was stored on the server, to which he answered "It's my opinion we would have no way of knowing whether that had was a factor or not." (N.T. 58-59).

In response to questioning by the Court, Mansmann testified that the server was comprised of two "head units" and that one of the head units would not power up. He testified that the servers were decommissioned in February of 2019, and that there is no way to tell whether an earlier effort to turn them on would have succeeded (N.T. 63). He explained that part of the reason Precise, Inc., sought outside help with restoring the units was their concern that "it's possible we could completely corrupt these and that's it" (N.T. 64).

Plaintiff called Brett Creasy in rebuttal. Creasy testified that he is the president of Bit-By-Bit, and its director of digital forensics, a company involved in digital forensics discovery and cyber security (N.T. 66). He was told that the Defendants were put on notice of Plaintiffs' claim in May of 2020 (N.T. 69). Creasy testified that the procedure undertaken by Precise, Inc., as explained in Mansmann's testimony, "seemed reasonable to me." N.T. 72. "I would say, I mean that there's no way of knowing for sure the pinpoint cause of what caused ESI to be non-recoverable, but based on what Precise described at least their process seemed reasonable to me" (N.T. 72). In response to a question as to whether an earlier effort to retrieve data would have been more successful, Creasy testified "There's no way to know for sure but, again, back to my earlier point, the earlier you take action, the better." N.T. 74). On cross-examination, Creasy testified "Without a time machine, no one would know for sure. The earlier is always better, I would say. But unless you actually attempt it you won't know what the results are." (N.T. 74). Upon further questioning by the Court, Creasy testified "I go back to my earlier is better. My expectation would be if you tried it years earlier then you would have had a higher likelihood of success. Beyond that there's no way to really know for certain." (N.T. 75).

This Court entered its Opinion and Order on Plaintiffs' Supplemental Motion for Sanctions and to Extend Discovery Deadline, filed August 30, 2024, and Defendants' Countermotion for Sanctions, filed September 24, 2024, dated September 12, 2025, ruling as follows:

1. Plaintiffs' claim for sanctions for alleged spoliation of evidence asserted within Plaintiffs' Supplemental Motion for Sanctions and to Extend Discovery Deadline, filed August 30, 2024, is DENIED.
2. Plaintiffs' claim for sanctions for attorney's fees asserted within Plaintiffs' Supplemental Motion for Sanctions and to Extend Discovery Deadline, filed August 30, 2024, is DENIED.
3. Defendants' Countermotion for Sanctions, filed September 24, 2024, is DENIED.
4. Nothing set forth in this Order is intended to prejudice either party from seeking relief pursuant to 42 Pa.C.S. Section 2503, by timely motion filed not later than thirty (30)

days after conclusion of this matter by final order. If either party files a timely motion, nothing set forth in this Opinion and Order will prejudice any such claim.

On September 19, 2025, counsel for Plaintiff filed a Motion for Reconsideration, which was originally scheduled for oral argument on November 26, 2025. Due to various continuous requests by counsel for the parties, that oral argument was eventually continued to February 3, 2026. Counsel for Plaintiff appeared personally and counsel for Defendant appeared by telephone. Generally speaking, counsel for Plaintiff remains convinced that discovery sanctions against the Defendant are appropriate, and that the Court's invitation to the parties to seek relief at the conclusion of the matter by timely motion filed not later than thirty (30) days after conclusion of this matter pursuant to 42 Pa.C.S. Section 2503, is inadequate.

ORDER

And now, this 4th day of February, 2026, the Court finds that nothing raised by Plaintiff's counsel in connection with the Motion for Reconsideration was novel. Rather, arguments in support of Plaintiff's Motion for Reconsideration were redundant of the arguments asserted by the Plaintiff in support of the Motion for Sanctions, in the first instance. For that reason, Plaintiff's Motion for Reconsideration, filed September 19, 2025, is **DENIED**.

BY THE COURT,

William P. Carlucci, Judge

cc: Court Administrator
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