

and he even took testimony, between a party and a company who is in control of relevant evidence. This company is where an apartment's layout, wiring, or some type of storage facility, who otherwise owes no duty and therefore no liability, to the party injured by the destruction of the evidence. Recognition of the independent tort creates the highest duty ordinarily due the injured apartmentee.

Punitive damages for grossly negligent conduct which bolsters the deterrence effect of the intentional tort. There would be a new factor in the cost-benefit calculation. The potential spoliation would no longer believe that the analysis is weighed heavily in favor of spoliation practices. The element of being caught would increase if liability is extended to when the "lead" is discovered. Ironically, with potential compensatory and punitive damage awards, the cost of being found liable for the spoliation would be much greater.

Neither the idea of creating a new tort nor the concept of holding people responsible for destroying needed evidence is new. The legal system has criminalized the destruction of evidence. Tort law normally punishes victims of wrongful conduct. Allowing a harmed party to seek compensation via a civil tort action for an injury incurred by another who's intentional or negligent conduct is not unorthodox.

For all of the above reasons, introduction into the intentional and negligent spoliation of evidence should be recognized, this action as a direct and legal remedy for when relevant evidence necessary for a party's personal litigation is spoliated.

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