

## Case Summary

### Genworth Fin. Wealth Mgmt., Inc. v. McMullan

2010 U.S. Dist. LEXIS 53145 (D. Conn. June 1, 2010)

**Defendants Ordered to Pay Majority of Imaging Costs Due to Willful Spoliation**

On plaintiff's motion to compel, the District Court for the District of Connecticut ordered the defendant employees to submit their personal computers to a neutral computer expert for mirror imaging and to pay 80% of the cost due to their intentional spoliation.

Plaintiff Genworth Financial Wealth Management filed suit against a group of former employees under the Computer Fraud and Abuse Act and the Connecticut Uniform Trade Secrets Act, alleging that the employees stole the company's client information database as part of a plan to set up a competing business. The plaintiff alleged that the employees had used its customer list to solicit hundreds of its clients and to interfere with other business relationships. The defendants argued that they had collected the client information through permissible means and did not have the client database.

One month before filing suit, the plaintiff notified the defendants of their duty to preserve electronic evidence. During discovery, however, the plaintiff determined one of the employees had recently discarded the computer on which he had allegedly downloaded the client database.

On the plaintiff's motion to compel, the court found the defendants' argument of independent collection unconvincing, reasoning that the client data was very detailed and unlikely to be created from memory or mere Internet searches. Noting that a mirror image of the relevant computer equipment was the only way for the plaintiff to obtain the electronic evidence to which it was entitled, the court ordered the defendants to submit their computers to a neutral expert and to pay 80% of the associated cost.

#### Decision

The court rejected the defendants' argument that they could not afford to pay a neutral computer expert and agreed with the plaintiff that sanctions may be warranted. The timing of the defendants' disposal of a relevant computer suggested consciousness of wrongdoing and intentional spoliation. The court agreed that the defendants may be subject to discovery sanctions if they did not fully comply with the order. It was unreasonable, the court said, to make the plaintiff seek a court order to obtain the electronic evidence to which it was already entitled.