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Federal District Court Dismisses Property Claim After Insured Allows Loss Location to Be Destroyed Prior to Inspection

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In *BMJ Partners LLC v. Arch Specialty Insurance Co.*, No. 20-CV-03870, 2021 WL 3709182 (N.D. Ill. Aug. 20, 2021), the United States District Court for the Northern District of Illinois dismissed, with prejudice, a coverage action filed by an insured based on a failure to comply with a request to inspect the involved property under Rule 34 of the Federal Rules of Civil Procedure. The loss at issue involved a hail-damaged building in Carpentersville, Illinois. During the discovery phase of the litigation, the property insurer served a request to inspect the subject property under FRCP Rule 34. After ignoring numerous requests to schedule the inspection, the insurer filed a motion to dismiss for failure to prosecute or, alternatively, to compel an inspection. After the motion was filed, a status hearing was conducted where the insured's counsel advised the Court of his intention to file a motion to withdraw from representation of the insured. After the date set to file the motion to withdraw passed without anything being filed, the Court entered an order directing the insured to show cause why the matter should not be dismissed for lack of prosecution.

In response to the order to show cause, the insured advised the Court that instead of responding to the property insurer's discovery requests, the insured sold the property to a buyer who subsequently tore down the building. In light of what the Court described as the insured's "flabbergasting admission", the Court was compelled to grant the motion to dismiss and do so with prejudice. In support of the "extreme sanction" of dismissing the matter with prejudice, the Court first noted that the insured had not come close to justifying a discharge of the pending show-cause order. Rather, the insured's responsive filing refers to the Court's show cause order only indirectly and does not deny, or offer any justification for, disregarding case-related communications for several months. Even if that were not enough, the Court further held that the insured's spoliation of evidence likewise provides sufficient basis for dismissal given that Courts have inherent authority to sanction parties for failure to preserve potential evidence. According to the Court, dismissal with prejudice was the only appropriate sanction in light of the insured's violation of the obligation to preserve the property. Not only did the insured ignore multiple requests from the insurer to inspect, but during the same time frame the insured found time to allow inspections of the building as part of the sale by both the Village of Carpentersville and the property's buyer.

In rendering its ruling, the Court discounted the insured's argument that a prior inspection by the claims adjuster and the "nearly forty high-resolution color photographs" were sufficient evidence of the condition of the building. Rather, the Court held that under Rule 34, a defendant is entitled to conduct an inspection of the property for the purpose of gathering evidence and informing its experts and counsel. Noting that the failure to preserve the property cannot be remedied by any sanction short of dismissal, the Court concluded that to permit the insured to proceed after allowing the key piece of evidence to be destroyed would be "grossly unfair".