

Court Issues Reminder of Potentially Harsh Consequences for Failure to Preserve Evidence in Anticipation of Litigation

Mark Felger and Simon Fraser discuss a Delaware Superior Court opinion that demonstrates the importance of preserving evidence leading up to litigation in a *Delaware Business Court Insider* article. In *BDO USA v. Everglade Global*, the court found that the CEO and founder of the defendant who was a former BDO partner, had spoliated evidence at his former employer.

Upon analyzing the founder's laptop and related devices, it was determined that a substantial amount of evidence was destroyed. The founder later admitted to these actions during a hearing. Shortly after, the court indicated that the defendant was in litigation at the time the spoliation occurred and had a duty to preserve evidence.

Because the defendant acted in a manner that denied the plaintiff access to evidence that was at the center of its claims, the court entered a default judgment and fee shifting order in favor of the plaintiff.

To read the full article, [click here](#).



Mark E. Felger

**Co-Chair,
Bankruptcy,
Insolvency &
Restructuring**

mfelger@cozen.com
Phone: (215) 605-8889
Fax: (302) 295-2013



Simon E. Fraser

Member

sfraser@cozen.com
Phone: (302) 295-2011
Fax: (302) 295-2013

Related Practice Areas

- Bankruptcy, Insolvency & Restructuring