

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

JOHN A. GRIECO,

Plaintiff,

v. 4:12-cv-195

TECUMSEH PRODUCTS COMPANY,
et al.,

Defendants.

ORDER

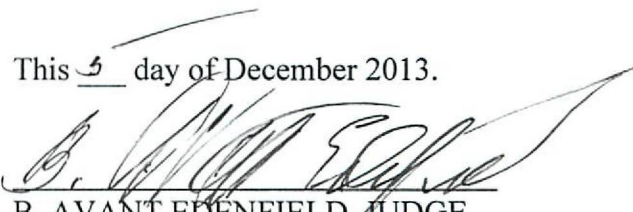
Before the Court is Defendants' Motion for Adverse Inference Regarding Spoliated Evidence, ECF No. 50. Defendants allege that Grieco spoliated components of the compressor involved in the incident. *Id.* at 2-4. The Court **DENIES** the motion.

"Spoliation is the destruction or significant alteration of evidence, or the failure to preserve property for another's use as evidence in pending or reasonably foreseeable litigation." *Graff v. Baja Marine Corp.*, 310 F. App'x 298, 301 (11th Cir. 2009). "District courts are afforded broad discretion in determining whether to award spoliation sanctions." *In re Delta/AirTran Baggage Fee Antitrust Litig.*, 770 F. Supp. 2d 1299, 1305 (N.D. Ga. 2011); *see also* ECF No. 50 at 1. The party seeking sanctions must prove "(1) the missing evidence existed at one time; (2) [opposing party] had a duty to preserve the evidence; and (3) the evidence was crucial to [opposing party] being able to prove [his] . . . case." *Id.*

The Defendants have proved these three elements, but the Court concludes that Grieco fulfilled his duty to preserve the evidence. The accident in this case occurred on July 22, 2010. ECF No. 50 at 3. Grieco was taken to the hospital after the accident and released from the burn center four days later. *Id.* Grieco retrieved the compressor on September 3, 2010. *Id.*

Defendants contend that waiting a month to retrieve the compressor constitutes spoliation. *Id.* Yet in the very next paragraph, the Defendants argue Grieco retrieved the compressor in question "[n]ot long after he was released from the hospital." *Id.* Grieco made sufficiently expeditious efforts to fulfill his duty to preserve evidence. No sanctions against Grieco are warranted, so the Court **DENIES** the motion.

This 5 day of December 2013.


B. AVANT EDENFIELD, JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA