

MARY FIVEASH \* NO. 2015-CA-1230  
VERSUS \* COURT OF APPEAL  
PAT O'BRIEN'S BAR, INC. \* FOURTH CIRCUIT  
AND ABC INSURANCE \* STATE OF LOUISIANA  
COMPANY \*

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**DYSART, J., DISSENTS, WITH REASONS.**

I respectfully dissent. A party claiming spoliation of evidence must prove that the defendant intentionally destroyed the evidence for the purpose of depriving the opposing party of its use. *Quinn v. RISO*, 03-0903 (La.App. 4 Cir. 3/3/04), 869 So.2d 922, 927. In short, to find that spoliation of the evidence has occurred, our law requires a showing of bad faith or bad conduct. *Guillory v. Pellerin*, 2009WL690543; *Yelton v. PHI, Inc.*, 284 F.R.D. 374 (E.D.La. 2012).

Here, the defective step in question was located in a highly trafficked area in Pat O' Brien's Bar and required repair so as to avoid future accidents. Photos of the step both before and after the repair were available. The nature of the step (or threshold) was not changed, but only repaired to make it safe. There was open communication between counsel before and during the repair. Further, the obviously open nature of and public access to the area allowed before the repair precluded any bad faith effort to destroy evidence. I would deny the writ.