

Federal Court Sanctions Defendant for Failure to Preserve E-mails

SmithAmundsen Electronic Discovery Legal Update
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In a trade secrets lawsuit, a federal judge granted a plaintiff's motion for sanctions for spoliation after a defendant failed to preserve e-mail and other electronically stored information. A defendant chemical company changed its email server a few months after plaintiff filed its lawsuit, but neglected to save certain e-mail communications from its previous server. Apply the newly revised Federal Rule of Civil Procedure 37 governing a party's actions in failing to preserve electronically stored information, the Court found that the plaintiff "show[ed] it was prejudiced by not having access to emails" not preserved when the servers were updated. The court explained:

"[Defendant] took steps to change its email service provider to ensure every email was captured to comply with the requirements of this lawsuit. While [defendant's Chief Financial Officer] testified that [Defendant's] previous email service provider did not have the capability to capture archive emails, the Court finds it was not unreasonable for Spectrum to have taken steps to ensure that any emails prior to switching over to its new email service provider were saved."

Core Laboratories, LP v. Spectrum Tracer Services, LLC, 2016 WL 879324 (W.D. Okla. Mar. 7, 2016).

Defendant's lost emails allegedly had evidence regarding the company's formation and how it manufactured its competing tracing systems. The court ordered an adverse inference jury instruction that the lost emails could be presumed to have been unfavorable to Spectrum. However, separately, the court did order that "it was reasonable for...personal files to be deleted before the hard drive was turned over to [the plaintiff] and that there was no bad faith on the part of defendants in deleting...personal files." Applying the new FRCP 37, federal courts continue to be less than sympathetic to companies that fail to adequately preserve electronically stored information.

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