

## CASE PROFILE

### In re NTL, Inc. Securities Litigation

*Failure to reissue an ongoing litigation hold results in severe sanctions*

#### KEY INFORMATION

<b>Reference No.:</b>	2007 U.S. Dist. LEXIS 6198
<b>Date:</b>	January 30, 2007
<b>Court:</b>	U.S. District Court for the Southern District of New York
<b>Judge:</b>	U.S. Magistrate Judge Andrew J. Peck
<b>Sector:</b>	Securities
<b>Type:</b>	Securities fraud

#### CASE SUMMARY

In this case, plaintiffs filed a class action complaint against NTL Europe's predecessor company, NTL, Inc. ("Old NTL"), claiming that its management drove the company into bankruptcy while falsely reporting to the public that the company was in healthy financial condition. Post-bankruptcy, the company reorganized into two entities: NTL Europe and NTL, Inc. ("New NTL").

In anticipation of litigation, Old NTL issued a legal hold to approximately 17 employees and also reissued a litigation hold after the class complaint was filed. However, when the company reorganized as NTL Europe, it did not reissue litigation hold memos. In response to requests, NTL Europe informed counsel that all past documents had been transferred to New NTL. A subpoena to New NTL resulted in 70 boxes of documents, but did not include any emails. New NTL stated that responsive emails were lost after it upgraded servers after the reorganization.

Several plaintiffs sought sanctions and an adverse inference order against NTL Europe because it allowed New NTL to destroy email of 44 key players. NTL Europe argued that the company was not responsible for spoliation of documents that were in New NTL's possession. The court rejected NTL's argument and cited Rule 34(a) of the FRCP, which does not require legal ownership or actual physical possession of documents to be produced, and held that NTL Europe had the legal right and the practical ability to obtain relevant documents from New NTL.

#### OUTCOME

Based on NTL Europe's failure to implement and execute a litigation hold, and the failure to disclose its ability to access documents and electronically stored information in the possession of New NTL, the court held that NTL Europe's conduct was "at least grossly negligent."

The court ordered an adverse inference sanction to be given in the trial court's jury charge and to be considered in providing a report and recommendation on NTL Europe's pending summary judgment motion. NTL Europe also was ordered to pay plaintiffs' costs and attorney fees, as well as attorney fees related to three depositions that the court included as necessary as a result of NTL Europe's negligence of its preservation obligations.

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