

CASE PROFILE

Zubulake v. UBS Warburg

Landmark case sets precedent for obligation for legal holds and to preserve ESI

KEY INFORMATION

Reference No.:	2004 U.S. Dist. LEXIS 13574
Date:	July 20, 2004
Court:	U.S. District Court for the Southern District of New York
Judge:	U.S. Magistrate Judge Shira Scheindlin
Sector:	Financial Services
Type:	Wrongful termination and discrimination

CASE SUMMARY

In *Zubulake v. UBS Warburg*, plaintiff filed suit against her former employer, alleging gender discrimination, failure to promote, and retaliation. In *Zubulake V*, plaintiff contended that some of the emails were never produced by defendant, including one that pertained to a conversation about plaintiff. Plaintiff requested sanctions in the form of an adverse inference jury instruction.

The case focused on the duties of in-house and outside counsel related to litigation holds and document retention policies. Although UBS Warburg issued and reissued litigation holds, some emails and backup tapes were lost. The court found that UBS employees deleted relevant emails from their computers despite preservation instructions sent by in-house and outside counsel.

The court concluded that "parties also have a duty to make sure that discoverable information is not lost." Moreover, Judge Scheindlin wrote "a party cannot reasonably be trusted to receive a litigation hold instruction once and to fully comply with it without the active supervision of counsel." The court suggests instructions for in-house and outside counsel to follow as a means of demonstrating their "continuous efforts to satisfy the duty," which includes: 1) issuing a litigation hold at the outset of litigation or whenever it is reasonably anticipated, including reissuing them periodically; 2) communicating directly and periodically with key players regarding preservation duty; and 3) instructing all employees to produce electronic copies of their relevant active files and to ensure that all backup media is identified and stored in a safe place.

OUTCOME

The court concluded that defendant acted willfully in destroying relevant information and failing to follow the instructions of counsel. As a result, Judge Scheindlin ordered an adverse inference instruction against UBS Warburg. The court held that the jury should presume that missing email contained information unfavorable to UBS. In addition, the court awarded plaintiff monetary sanctions for reimbursement of costs of additional re-depositions and of the motion leading to this opinion, including attorney fees. Plaintiff also received \$9.1 million in compensatory and \$20.2 million in punitive damage awards.

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