



Mock Hearing

Leonard Skinard v Steven Python and Python Co.



Presiding Judge – Andrew J. Peck



Hon. Andrew J. Peck
USDC S.D. N.Y. (ret.)
Senior Counsel, DLA Piper



Plaintiff Counsel
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Rule 37(e)-Failure to Preserve Electronically Stored Information

If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the court:

- 1) Upon finding prejudice to another party from loss of the information, may order measures no greater than necessary to cure the prejudice; or
- 2) Only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation may:
 - a) Presume that the lost information was unfavorable to the party;
 - b) Instruct the jury that it may or must presume the information was unfavorable to the party; or
 - c) Dismiss the action or enter a default judgment