

SANCTIONS FOR E-DISCOVERY VIOLATIONS: BY THE NUMBERS

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ABSTRACT

This Article reviews our comprehensive survey of written opinions from cases in federal courts prior to January 1, 2010, involving motions for sanctions relating to the discovery of electronically stored information (ESI). We analyzed each case for various factors, including date, court, type of case, sanctioning authority, sanctioned party, sanctioned misconduct, sanction type, sanctions to counsel, if any, and the protections provided from sanctions by Federal Rule of Civil Procedure 37(e). The survey identified 401 sanction cases and 230 sanction awards and showed that sanction motions and awards have increased over time, particularly in the last five years. Sanctions against counsel are rare but are also increasing. Sanction motions have been filed in all types of cases and in courts across the country. Failure to produce ESI is the most common basis for sanctions. Courts have used a variety of different rules, statutes, and powers to sanction parties for e-discovery violations, including Rule 37 and the inherent power of the court, and courts impose many different sanction types on e-discovery violators, including the severe sanctions of dismissal, default judgment, adverse jury instructions, and sizeable monetary awards. Rule 37(e) has not provided broad protection from such sanctions.

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INTRODUCTION

E-discovery sanctions are at an all-time high. We identified 230 sanction awards in 401 cases¹ involving motions for sanctions relating to the discovery of electronically stored information (ESI) in federal courts prior to January 1, 2010. We analyzed these cases for a variety of factors, including sanctioning court, sanctioning authority, sanctioned party, sanction type, and sanctioned misconduct. Our analysis indicates that although the annual number of e-discovery sanction cases is generally increasing, there has been a significant

1. *See infra* Appendix A. Modern cases may involve not only ESI but also paper documents. Some of the cases involving e-discovery sanctions include discovery of both ESI and paper documents.

increase in both motions and awards since 2004. Motions for sanctions have been filed in all types of cases and all types of courts. The sanctions imposed against parties in many cases are severe, including dismissals, adverse jury instructions, and significant monetary awards. Sanctions against counsel, although uncommon, are on the rise as well. All the while, the safe harbor provisions of Rule 37(e) of the Federal Rules of Civil Procedure² have provided little protection to parties or counsel.

Producing parties have struggled to comply with ever-expanding and increasingly complex responsibilities as ESI has played a predominant role in pretrial discovery. The liberal scope of discovery in federal courts, when coupled with ESI's defining characteristics—its high volume, broad dispersal, and dynamic nature—also confounds efforts to conduct discovery effectively and economically. Governing rules³ have been amended⁴ and supplemented⁵ to provide a procedural framework “to secure the just, speedy, and inexpensive

2. FED. R. CIV. P. 37(e).

3. For amendments and supplements of state rules regarding ESI, see, for example, Order Amending Rules 16(b), 16(c), 16.3, 26(b), 26.1, 26.2, 33(c), 34, 37(g), & 45, Ariz. Rules of Civil Procedure, No. R-06-0034 (Ariz. Sept. 5, 2007), *available at* http://www.supreme.state.az.us/rules/ramd_pdf/r-06-0034.pdf; and Order Amending Rules of Trial Procedure, No. 94S00 (Ind. Sept. 10, 2007), *available at* <http://www.in.gov/judiciary/orders/rule-amendments/2007/trial-091007.pdf>, which both closely track the December 1, 2006, amendments to the Federal Rules of Civil Procedure. For a bill that adopts some aspects of the December 1, 2006, amendments to the Federal Rules but that also includes several nonconforming provisions, see Electronic Discovery Act, A.B. 5, 2009–2010 Leg., Reg. Sess. (Cal. 2009). For amendments and supplements that involve local rules regarding ESI, see, for example, Suggested Protocol for Discovery of Electronically Stored Information (D. Md. 2007), at 1, *available at* <http://www.mdd.uscourts.gov/news/news/ESIProtocol.pdf>, which states that its purpose “is to facilitate the just, speedy and inexpensive conduct of discovery involving ESI in civil cases,” and Guidelines for Discovery of Electronically Stored Information (D. Kan. Feb. 1, 2008), *available at* <http://www.ksd.uscourts.gov/guidelines/electronicdiscoveryguidelines.pdf>, which states that “[t]hese guidelines are intended to facilitate compliance with the provisions of Fed. R. Civ. P. 16, 26, 33, 34, 37, and 45, as amended December 1, 2006 and December 1, 2007, relating to the discovery of ESI.”

4. *See, e.g.*, FED. R. EVID. 502 (as amended Jan. 5, 2009) (addressing issues relating to the attorney-client privilege and the work-product doctrine, including inadvertent disclosure and subject-matter waiver). *Compare* FED. R. CIV. P. 26(b)(2)(B) (2006) (specifying different procedures and requirements for the discovery of “not reasonably accessible” ESI), *with* FED. R. CIV. P. 26(b)(2)(B) (2002) (containing no such provision for the discovery of ESI).

5. *See, e.g.*, SEVENTH CIRCUIT ELEC. DISCOVERY PILOT PROGRAM, PRINCIPLES RELATING TO THE DISCOVERY OF ELECTRONICALLY-STORED INFORMATION 13 (2009), *available at* <http://www.ilcd.uscourts.gov/Statement-PhaseOne.pdf> (“The purpose of these Principles is . . . to promote, whenever possible, the early resolution of disputes regarding the discovery of electronically stored information . . .”).

determination”⁶ of discovery disputes involving ESI. Most notably, substantial amendments were made to the Federal Rules of Civil Procedure in 2006 to address the discovery of ESI in federal courts.⁷ Yet lawyers agree that discovery in the postamendment world is more expensive, more complicated, and more contentious than ever.⁸ The highest number of filed motions and awards relating to e-discovery sanctions in any single year prior to 2010 occurred in 2009,⁹ three years after the effective date of the 2006 amendments.

Performing complicated tasks on a deadline creates the opportunity for incorrect or incomplete production, whether resulting from innocent inadvertence or intentional malfeasance.¹⁰ When e-discovery efforts fall short, producing parties may be penalized, and prejudiced parties may be made whole through the award of sanctions. Marquee e-discovery-disaster cases, *Qualcomm Inc. v. Broadcom Corp.*¹¹ and *Metropolitan Opera Ass’n v. Local 100, Hotel Employees & Restaurant Employees International Union*,¹² are towering reminders of the most severe sanctions—dismissals, multimillion dollar awards, and bar association referrals—that can be imposed for the most egregious misconduct.¹³ Of greater concern to

6. FED. R. CIV. P. 1.

7. See generally ADVISORY COMM. ON FEDERAL RULES OF CIVIL PROCEDURE, REPORT OF THE CIVIL RULES ADVISORY COMMITTEE (2006), available at <http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/Reports/CV06-2006.pdf> (recommending several changes to the Federal Rules of Civil Procedure).

8. See AM. COLL. OF TRIAL LAWYERS & INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., INTERIM REPORT ON THE JOINT PROJECT OF THE AMERICAN COLLEGE OF TRIAL LAWYERS TASK FORCE ON DISCOVERY AND THE INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM 3 (2008), available at http://www.actl.com/AM/Template.cfm?Section=All_Publications&Template=/CM/ContentDisplay.cfm&ContentID=3650 (“Discovery costs far too much and has become an end to itself. . . . The discovery rules in particular are impractical in that they promote full discovery as a value above almost everything else. Electronic discovery, in particular, needs a serious overhaul.” (internal quotation marks omitted)).

9. See *infra* Figures 1 and 2.

10. See, e.g., *Gamby v. First Nat’l Bank*, No. 06-11020, 2009 WL 127782, at *5 (E.D. Mich. Jan. 20), *objection denied*, 2009 WL 963116 (E.D. Mich. Apr. 8, 2009) (dismissing the action for discovery failures); see also *id.* (“Defendant’s performance can be explained only by monumental incompetence, inexcusable neglect, or purposeful evasion. None is sufficient to avoid responsibility or sanction. Enough is enough.”).

11. *Qualcomm Inc. v. Broadcom Corp.*, No. 05cv1958-B (BLM), 2008 WL 66932 (S.D. Cal. Jan. 7), *vacated in part*, 2008 WL 638108 (S.D. Cal. Mar. 5, 2008).

12. *Metro. Opera Ass’n v. Local 100, Hotel Emps. & Rest. Emps. Int’l Union*, 212 F.R.D. 178 (S.D.N.Y. 2003), *adhered to on reconsideration* by No. 00 Civ. 3613(LAP), 2004 WL 1943099 (S.D.N.Y. Aug. 27, 2004).

13. See *Qualcomm*, 2008 WL 66932, at *17 (“Accordingly, for its monumental and

the average practitioner is the increasing frequency of sanction decisions, an issue most recently illustrated by *Pension Committee of University of Montreal Pension Plan v. Banc of America Securities, LLC*,¹⁴ in which all thirteen plaintiffs were sanctioned for e-discovery failings not rising to the level of intentional or willful conduct.¹⁵ In many cases, more attention is focused on e-discovery than on the merits,¹⁶ with a motion for sanctions an increasingly common filing.¹⁷ As a result, leading practitioners agree that more uniform standards and guidelines are needed to guide counsel through the complex tasks of discovery.¹⁸

I. E-DISCOVERY SANCTIONS HAVE INCREASED

Although discovery relating to ESI, and disputes involving it, appeared as early as the 1970s,¹⁹ only recently has the threat of sanctions relating to discovery of ESI been a prevalent concern of

intentional discovery violation, Qualcomm is ordered to pay \$8,568,633.24 to Broadcom”); *Metro. Opera*, 212 F.R.D. at 231 (“Plaintiff’s motion for judgment as to liability against defendants and for additional sanctions in the form of attorneys’ fees necessitated by the discovery abuse by defendants and their counsel . . . is granted”).

14. *Pension Comm. v. Banc of Am. Sec. LLC*, 685 F. Supp. 2d 456, 496–97 (S.D.N.Y. 2010).

15. *Id.* at 478 (“I conclude that no plaintiff engaged in willful misconduct. However, . . . I find that [some plaintiffs] acted with gross negligence, and [other plaintiffs] acted in a negligent manner.”).

16. See *Technical Sales Assocs. v. Ohio Star Forge Co.*, No. 07-11745, 2009 WL 1212809, at *1 (E.D. Mich. May 1, 2009) (“Now, an electronic discovery dispute has become the sideshow which eclipses the circus.”); *Oscher v. Solomon Tropp Law Grp. (In re Atl. Int’l Mortg. Co.)*, 352 B.R. 503, 505 (Bankr. M.D. Fla. 2006) (“The matter before this Court presents a deplorable scenario under which the ultimate issues raised by the pleadings are completely overcome by discovery disputes which have gained their own life.”).

17. See *infra* Part I.

18. See, e.g., AM. COLL. OF TRIAL LAWYERS & INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., FINAL REPORT ON THE JOINT PROJECT OF THE AMERICAN COLLEGE OF TRIAL LAWYERS TASK FORCE ON DISCOVERY AND THE INSTITUTE FOR THE ADVANCEMENT OF THE AMERICAN LEGAL SYSTEM 1, 14–17 (2009), available at <http://www.actl.com/AM/Template.cfm?Section=Home&template=/CM/ContentDisplay.cfm&ContentID=4008> (expressing the need for “a framework for developing rules of reasonableness and proportionality”); Thomas Y. Allman, *Amending the Federal Rules (Again): Finding the Best Path to an Effective Duty to Preserve*, ENGAGE, Sept. 2010, at 92, 94, available at http://www.fed-soc.org/doclib/20100910_AllmanEngage11.2.pdf; Matthew S. Makara, Note, *My Dog Ate My Email: Creating a Comprehensive Adverse Inference Instruction Standard for Spoliation of Electronic Evidence*, 42 SUFFOLK U. L. REV. 683, 683 (2009) (arguing for a comprehensive adverse-inference-instruction standard).

19. See, e.g., *United States v. IBM Corp.*, 58 F.R.D. 556, 559 (S.D.N.Y. 1973) (denying the plaintiff’s motion to compel the defendant to pay for the reconstruction of a destroyed database, but ordering the defendant to deposit the documents necessary for reconstructing the database with the court).

counsel. Sanctions for e-discovery violations began to appear in the early 1980s.²⁰ The first case identified in which e-discovery sanctions were awarded was *William T. Thompson Co. v. General Nutrition Corp.*²¹ In *William T. Thompson*, the plaintiff sued General Nutrition Corporation (GNC) for antitrust violations, alleging that GNC falsely advertised the availability of the plaintiff's products at GNC's stores. GNC's purchase, sale, and inventory records, kept in paper form and in computer files, were key to the plaintiff's case.²² After the plaintiff filed the lawsuit and initial discovery requests, GNC destroyed its paper and computer inventory records. The district court found that GNC could have maintained the computer records without undue burden and that it did not instruct its employees to preserve records, which resulted in the records' routine destruction.²³ The court awarded the plaintiff monetary sanctions, attorneys' fees and costs, and default judgment because GNC's bad faith destruction of documents prejudiced the plaintiff.²⁴

For over a decade following *William T. Thompson*, cases involving motions for sanctions relating to e-discovery violations were sporadic, with some years having only a single e-discovery sanction case and other years having none.²⁵ After 1996, the number of cases slowly increased but did not reach an annual total in the double digits until 2004. As shown in Figures 1 and 2, the number of e-discovery sanction cases and the number of e-discovery sanction awards more than tripled between 2003 and 2004, from nine to twenty-nine sanction cases, and from six to twenty-one sanction awards. The numbers continue to rise. Our analysis of pre-2010 cases indicates that there were more e-discovery sanction cases (ninety-seven) and more e-discovery sanction awards (forty-six) in 2009 than in any prior year. In fact, there were more e-discovery sanction cases in 2009 than in all years prior to 2005 combined.

20. See, e.g., *Allen Pen Co. v. Springfield Photo Mount Co.*, 653 F.2d 17, 23–24 (1st Cir. 1981) (declining to sanction the defendant, who improperly destroyed computer records, because there was no evidence of bad faith and the plaintiff could have developed the evidence from third parties); *Wm. T. Thompson Co. v. Gen. Nutrition Corp.*, 593 F. Supp. 1443, 1455–56 (C.D. Cal. 1984) (awarding the plaintiff monetary sanctions and default judgment based on the defendant's bad faith destruction of paper and computer records after the lawsuit was filed).

21. *Wm. T. Thompson Co. v. Gen. Nutrition Corp.*, 593 F. Supp. 1443 (C.D. Cal. 1984).

22. *Id.* at 1445–46, 1449–51.

23. *Id.* at 1446–47, 1450.

24. *Id.* at 1455–56.

25. For the annual number of sanction cases and sanction awards, see *infra* Appendix B.

Figure 1. Annual Number of E-Discovery Sanction Cases

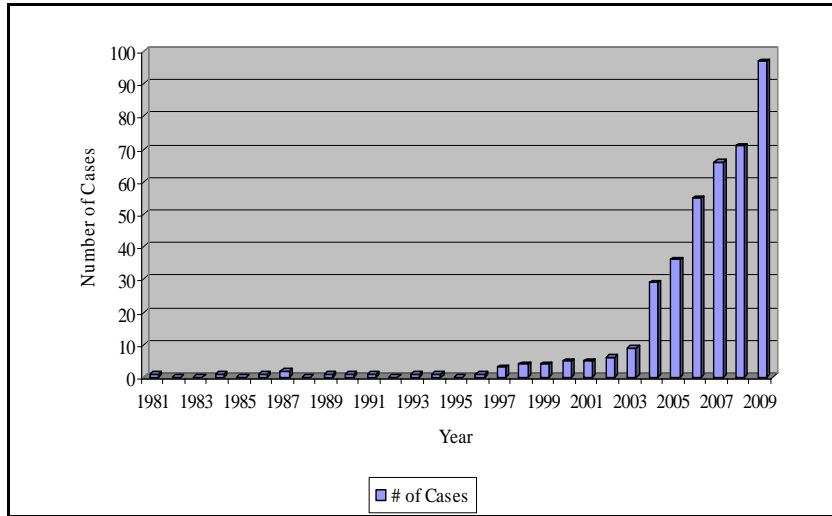
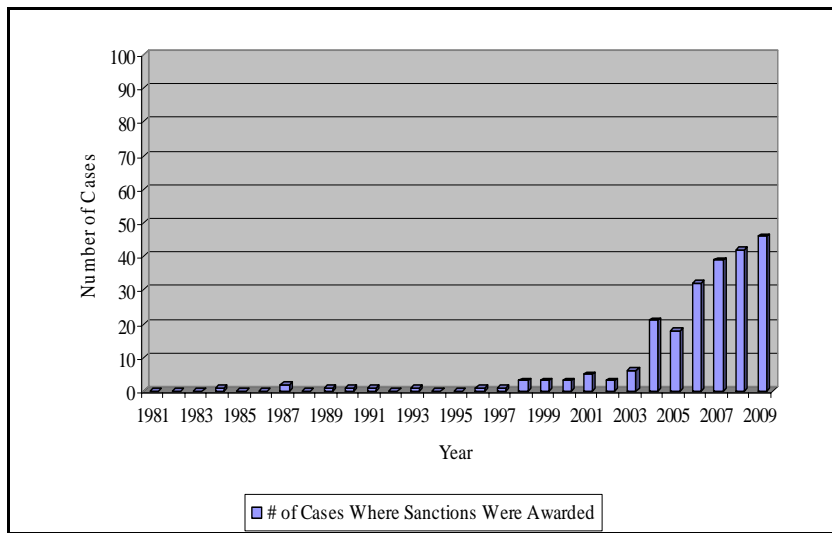


Figure 2. Annual Number of E-Discovery Sanction Awards



II. E-DISCOVERY SANCTION CASES ARE A DIVERSE DOCKET

Sanctions relating to e-discovery violations have reached courts everywhere, have appeared in all types of cases, have been awarded based on varying authority, and have been granted to defendants and plaintiffs asymmetrically.

A. *E-Discovery Sanction Motions Are Before All Courts*

Our research indicates that 183 district court judges and 111 magistrate judges from seventy-five federal districts in forty-four states,²⁶ as well as the Virgin Islands,²⁷ the District of Columbia,²⁸ and Puerto Rico,²⁹ have issued written opinions regarding sanctions involving e-discovery. All eleven of the federal appellate circuit courts,³⁰ as well as the Federal³¹ and D.C. Circuits,³² have issued

26. District courts in six states, Alaska, New Mexico, North Dakota, Vermont, West Virginia, and Wyoming, have not issued written opinions regarding sanctions for e-discovery violations.

27. See *Canton v. Kmart Corp.*, No. 1:05-cv-143, 2009 WL 2058908, at *1–3 (D.V.I. July 13, 2009) (granting the plaintiff's motion for a spoliation-of-evidence jury instruction to sanction the defendant for the failure to preserve videotape and other evidence); *Nieves v. Kmart Corp.*, No. 2005-CV-0024, 2009 WL 1605623, at *1–2 (D.V.I. June 8, 2009) (denying the plaintiff's motion for a spoliation-of-video-evidence instruction); *Dowling v. United States*, No. 2000-CV-0049, 2008 WL 4534174, at *2 (D.V.I. Oct. 6, 2008) (denying the plaintiff's motion for sanctions but granting a spoliation-of-evidence instruction due to the defendant's failure to preserve audiotape evidence).

28. *Covad Commc'ns Co. v. Revonet, Inc.*, 260 F.R.D. 5, 9 (D.D.C. 2009) (staying the plaintiff's motion for sanctions concerning the defendant's failure to produce ESI documents in the proper electronic format).

29. *Century ML-Cable Corp. v. Carrillo*, 43 F. Supp. 2d 176, 185 (D.P.R. 1998) (sanctioning the defendant for destroying a laptop and awarding default judgment in favor of the plaintiffs).

30. *O'Brien v. Ed Donnelly Enters.*, 575 F.3d 567, 587–88 (6th Cir. 2009) (reversing the district court's denial of an adverse-inference-instruction sanction for the spoliation of reports stored on a computer hard drive and remanding for consideration of whether appellees knew, or should have known, that the destroyed information may have been relevant to future litigation); *Ibarra v. Baker*, 338 F. App'x 457, 470 (5th Cir. 2009) (reversing the district court's sanctions against the defendant's attorney for the client's deletion of emails because there was no finding of bad faith evidenced by an intent to destroy adverse information); *Brookhaven Typesetting Servs., Inc. v. Adobe Sys., Inc.*, 332 F. App'x 387, 389 (9th Cir. 2009) (affirming the district court's refusal to grant terminating sanctions for the destruction of electronic source code); *Trask-Morton v. Motel 6 Operating L.P.*, 534 F.3d 672, 680 (7th Cir. 2008) (holding that a showing of bad faith is a prerequisite to imposing sanctions for the destruction of evidence); *Buckley v. Mukasey*, 538 F.3d 306, 323 (4th Cir. 2008) (instructing the district court that a finding of "bad faith" is not essential for an adverse-inference instruction for prelitigation spoliation and suggesting that "intentional," "willful," or "deliberate" conduct may be sufficient (quoting *Vodusek v. Bayliner Marine Corp.*, 71 F.3d 148, 156 (4th Cir. 1995) (internal quotation marks omitted))); *Procter & Gamble Co. v. Haugen*, 427 F.3d 727, 738–40 (10th Cir. 2005) (reversing the district court's order of dismissal for failure to preserve electronic data when the

opinions involving e-discovery sanctions. Additionally, nine bankruptcy court judges,³³ two United States Court of Federal Claims judges,³⁴ and one United States Court of International Trade judge³⁵ have addressed issues relating to e-discovery sanctions.

The vast majority of the 485 written rulings are from the district court level, with 251 written district court rulings and 189 magistrate rulings. Appellate review of e-discovery sanction cases has been

district court failed to provide a sufficient record of its reasoning and when no evidence of willfulness, bad faith, or culpability was presented); *Koken v. Black & Veatch Constr., Inc.*, 426 F.3d 39, 53 (1st Cir. 2005) (affirming the district court's denial of monetary sanctions for discovery violations involving electronic files); *Inst. for Motivational Living v. Doulos Inst. for Strategic Consulting*, 110 F. App'x 283, 288–89 (3d Cir. 2004) (upholding the district court's findings of civil contempt for the deletion of emails in violation of a discovery order but reversing the award of legal fees that went beyond compensating the plaintiff for the actual loss it incurred from the violation); *Stevenson v. Union Pac. R.R. Co.*, 354 F.3d 739, 745–50 (8th Cir. 2004) (affirming an adverse-inference-jury-instruction sanction for the destruction of a radio tape when the requisite element of bad faith was proven based on evidence indicating “an intent to destroy the evidence for the purpose of obstructing or suppressing the truth”); *Residential Funding Corp. v. DeGeorge Fin. Corp.*, 306 F.3d 99, 101 (2d Cir. 2002) (reversing the district court's denial of an adverse-inference jury instruction for the appellee's failure to produce emails in time for trial and holding that “discovery sanctions, including an adverse inference instruction, may be imposed where a party has breached a discovery obligation not only through bad faith or gross negligence, but also through ordinary negligence”); *Bashir v. Amtrak*, 119 F.3d 929, 931 (11th Cir. 1997) (affirming the district court's denial of an adverse-inference-jury-instruction sanction for the unexplained loss of a train-speed-recorder tape when no evidence of bad faith was shown).

31. *Samsung Elecs. Co. v. Rambus, Inc.*, 523 F.3d 1374, 1380–81 (Fed. Cir. 2008) (denying as moot the plaintiff's request for monetary sanctions due to the defendant's spoliation of evidence because the defendant offered to pay the full amount of the attorneys' fees in dispute).

32. *In re Fannie Mae Sec. Litig.*, 552 F.3d 814, 821 (D.C. Cir. 2009) (affirming a sanction for the delay in production of ESI when a nonparty subpoena recipient failed to produce ESI pursuant to a stipulated discovery schedule).

33. *Elec. Mach. Enters., Inc. v. Hunt Constr. Grp. (In re Elec. Mach. Enters., Inc.)*, 416 B.R. 801, 871–75 (Bankr. M.D. Fla. 2009); *Riverside Healthcare, Inc. v. Sysco Food Servs. of San Antonio, LP (In re Riverside Healthcare, Inc.)*, 393 B.R. 422, 428–30 (Bankr. M.D. La. 2008); *Hawaiian Airlines, Inc. v. Mesa Air Grp. (In re Hawaiian Airlines, Inc.)*, Bankr. No. 03-00817, Adv. No. 06-90026, 2007 WL 3172642, at *1 (Bankr. D. Haw. Oct. 30, 2007); *In re Kmart Corp.*, 371 B.R. 823, 843–854 (Bankr. N.D. Ill. 2007); *United States v. Krause (In re Krause)*, 367 B.R. 740, 758–59 (Bankr. D. Kan. 2007), *aff'd*, Nos. 08-1132, 08-1136, 2009 WL 5064348, at *8–9 (D. Kan. Dec. 16, 2009); *Quintus Corp. v. Avaya, Inc. (In re Quintus Corp.)*, 353 B.R. 77, 82–84 (Bankr. D. Del. 2006), *aff'd in part*, Nos. 01-501, 01-503, Adv. No. 04-53074, Civ. No. 06-769 SLR, 2007 WL 4233665 (D. Del. Nov. 29, 2007); *Oscher v. Solomon Tropp Law Grp. (In re Atl. Int'l Mortg. Co.)* 352 B.R. 503, 505 (Bankr. M.D. Fla. 2006); *Cohen Steel Supply, Inc. v. Fagnant (In re Fagnant)*, Nos. 03-10496-JMD, 03-1348-JMD, 2004 WL 2944126, at *1–3 (Bankr. D.N.H. Dec. 13, 2004); *In re LTV Steel Co.*, 307 B.R. 37, 42–50 (Bankr. N.D. Ohio 2004).

34. *Consol. Edison Co. v. United States*, 90 Fed. Cl. 228, 252–63 (2009); *Morse Diesel Int'l, Inc. v. United States*, 81 Fed. Cl. 220, 221–22 (2008).

35. *Daewoo Elecs. Co. v. United States*, 650 F. Supp. 1003, 1004–07 (Ct. Int'l Trade 1986).

limited, perhaps because many cases settle or are otherwise not appealed. We identified only thirty-two cases at the appellate level.³⁶

B. E-Discovery Sanction Motions Are in All Types of Cases

ESI discovery disputes and associated motions for sanctions appear in all types of cases. As Appendix A shows, the most common case types are employment (17 percent), contract (16 percent), and intellectual property (15.5 percent) cases. Sanctions for e-discovery violations were also discussed in tort cases (11 percent) and a variety of other types of cases, including civil rights (8.5 percent) and bankruptcy (3 percent).

C. E-Discovery Sanction Motions Are Granted through Varying Authority

Courts have used a variety of different rules, statutes, and powers to sanction parties for e-discovery violations.³⁷ Their array of authority appears to provide ample and flexible bases for addressing the various e-discovery sanction scenarios. We identified no case in which a court inclined to impose a sanction was unable to do so

36. *Koninklijke Philips Elecs. N.V. v. KXD Tech., Inc.*, 347 F. App'x 275 (9th Cir. 2009); *Grider v. Keystone Health Plan Cent., Inc.*, 580 F.3d 119 (3d Cir. 2009); *O'Brien v. Ed Donnelly Enters.*, 575 F.3d 567 (6th Cir. 2009); *Ibarra v. Baker*, 338 F. App'x 457 (5th Cir. 2009); *Wong v. Thomas*, 341 F. App'x 765 (3d Cir. 2009); *Brookhaven Typesetting Servs., Inc. v. Adobe Sys., Inc.*, 332 F. App'x 387 (9th Cir. 2009); *Sentis Grp. v. Shell Oil Co.*, 559 F.3d 888 (8th Cir. 2009); *In re Fannie Mae*, 552 F.3d 814; *Tri-Cnty. Motors, Inc., v. Am. Suzuki Motor Corp.*, 301 F. App'x 11 (2d Cir. 2008); *Buckley v. Mukasey*, 538 F.3d 306 (4th Cir. 2008); *Samsung Elecs.*, 523 F.3d 1374; *Grange Mut. Cas. Co. v. Mack*, 270 F. App'x 372 (6th Cir. 2008) (per curiam); *Trask-Morton v. Motel 6 Operating L.P.*, 534 F.3d 672 (7th Cir. 2008); *Ridge Chrysler Jeep, LLC v. DaimlerChrysler Fin. Servs. Ams., LLC*, 516 F.3d 623 (7th Cir. 2008); *Drnek v. Variable Annuity Life Ins. Co.*, 261 F. App'x 50 (9th Cir. 2007); *Bakhtiari v. Lutz*, 507 F.3d 1132 (8th Cir. 2007); *Greyhound Lines, Inc. v. Wade*, 485 F.3d 1032 (8th Cir. 2007); *Tech. Recycling Corp. v. City of Taylor*, 186 F. App'x 624 (6th Cir. 2006); *Serra Chevrolet, Inc. v. Gen. Motors Corp.*, 446 F.3d 1137 (11th Cir. 2006); *Procter & Gamble Co. v. Haugen*, 427 F.3d 727 (10th Cir. 2005); *Koken v. Black & Veatch Constr., Inc.*, 426 F.3d 39 (1st Cir. 2005); *Myrick v. Prime Ins. Syndicate, Inc.*, 395 F.3d 485 (4th Cir. 2005); *Rowe v. Albertsons, Inc.*, 116 F. App'x 171 (10th Cir. 2004); *Inst. for Motivational Living v. Doulos Inst. for Strategic Consulting*, 110 F. App'x 283 (3d Cir. 2004); *Morris v. Union Pac. R.R.*, 373 F.3d 896 (8th Cir. 2004); *Computer Task Grp., Inc. v. Brotby*, 364 F.3d 1112 (9th Cir. 2004); *Stevenson v. Union Pac. R.R. Co.*, 354 F.3d 739 (8th Cir. 2004); *Residential Funding Corp. v. DeGeorge Fin. Corp.*, 306 F.3d 99 (2d Cir. 2002); *Minn. Mining & Mfg. Co. v. Pribyl*, 259 F.3d 587 (7th Cir. 2001); *Bashir v. Amtrak*, 119 F.3d 929 (11th Cir. 1997); *Crown Life Ins. Co. v. Craig*, 995 F.2d 1376 (7th Cir. 1993); *Allen Pen Co. v. Springfield Photo Mount Co.*, 653 F.2d 17 (1st Cir. 1981).

37. See generally Symposium, *Sanctions in Electronic Discovery Cases: Views from the Judges*, 78 *FORDHAM L. REV.* 1, 4–5 (2009) (discussing the different sanction powers).

because particular rules or statutory requirements were not met. The sanctioning authorities include Rule 26(g)³⁸ and Rules 37(b),³⁹ 37(c),⁴⁰ and 37(d).⁴¹ Section 1927 of 28 U.S.C., titled “Counsel’s liability for excessive costs,” also provides authority to sanction any attorney “who so multiplies the proceedings in any case unreasonably and vexatiously.”⁴² Importantly, even when the requirements of the rules or statute are not met, federal courts still have sanctioned parties for e-discovery violations, deriving their sanctioning power from the court’s inherent authority. This inherent power arises from courts’ authority “to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.”⁴³

38. A court must impose sanctions under Rule 26(g) against the party, its counsel, or both, when the party fails to meet its disclosure obligations under Rule 26. FED. R. CIV. P. 26(g)(3). The completeness and accuracy of these disclosures must be certified by an attorney of record. *Id.* 26(g)(1). This certification requirement includes an obligation to conduct a reasonable inquiry into the disclosures. *Id.* Sanctions may include the imposition of expenses and attorneys’ fees incurred by the opposing party due to the violation. *Id.* 26(g)(3).

39. Rule 37(b) provides for sanctions against a party for violations of a discovery order. *Id.* 37(b). It lists potential sanctions ranging from dismissal to evidentiary preclusion to a stay of proceedings until the order is stayed. *Id.* 37(b)(2)(A). These sanctions include

(i) directing that matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims; (ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence; (iii) striking pleadings in whole or in part; (iv) staying further proceedings until the order is obeyed; (v) dismissing the action or proceeding in whole or in part; (vi) rendering a default judgment against the disobedient party; or (vii) treating as contempt of court the failure to obey any order, except an order to submit to a physical or mental examination.

Id. Additionally, the court must require that the noncompliant party, its attorneys, or both, “pay the reasonable expenses, including attorney’s fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.” *Id.* 37(b)(2)(C).

40. The court may sanction a noncompliant party under Rule 37(c) if the party does not make the required disclosure under Rule 26(a) or properly supplement its disclosures. *Id.* 37(c). Under Rule 37(c)(1), the court may prevent the use of the evidence or witnesses not provided. *Id.* 37(c)(1). The court may also require the payment of reasonable expenses and attorneys’ fees, inform the jury of the party’s failure, and impose any of the other sanctions at the court’s disposal under Rule 37. *Id.*

41. Should a party fail to respond or object to a request under Rule 34, the court may choose to sanction the party with any of the sanctions available under Rule 37(b). *Id.* 37(d)(3). The court may also require that the sanctioned party, its attorney, or both pay the reasonable expenses associated with the motion. *Id.*

42. The court may sanction only attorneys under this provision. 28 U.S.C. § 1927 (2006). The court may impose as a sanction the payment of the excess costs and attorneys’ fees that result from the offending attorney’s conduct. *Id.*

43. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630–31 (1962)).

Courts are not always precise in identifying the rule or statute upon which their sanction decisions are based. In some instances, no basis is identified. In other instances, there is a general citation to a rule without reference to a particular subsection. Many times, rules and statutes are cited together. Noting these difficulties, our analysis indicates that the most prevalent bases for sanctions were Rule 37 and the court's inherent authority. Rule 37, without reference to a particular subsection, was cited as a sole basis for sanctions in seventeen cases,⁴⁴ and one of its subsections (b), (c), or (d) was cited as the sole basis for sanctions in a total of twenty-four other cases.⁴⁵

44. *New Salida Ditch Co. v. United Fire & Cas. Ins. Co.*, No. 08-CV-00391-JLK-KLM, 2009 WL 2399933 (D. Colo. July 31, 2009); *Technical Sales Assocs. v. Ohio Star Forge Co.*, No. 07-11745, 2009 WL 728520 (E.D. Mich. Mar. 19, 2009); *Armisted v. State Farm Mut. Auto. Ins. Co.*, No. 07-10259, 2009 WL 81103 (E.D. Mich. Jan. 9, 2009); *Ajaxo Inc. v. Bank of Am. Tech. & Operations, Inc.*, No. CIV-S-07-0945 GEB GGH, 2008 WL 5101451 (E.D. Cal. Dec. 2, 2008); *Doe v. Norwalk Cmty. Coll.*, 248 F.R.D. 372 (D. Conn. 2007); *JPMorgan Chase Bank, N.A. v. Neovi, Inc.*, No. 2:06-CV-0095, 2007 WL 1514005 (S.D. Ohio May 16, 2007); *School-Link Techs., Inc. v. Applied Res., Inc.*, Civil Action No. 05-2088-JWL, 2007 WL 677647 (D. Kan. Feb. 28, 2007); *Rodgers v. Lowe's Home Ctrs., Inc.*, No. 05 C 0502, 2007 WL 257714 (N.D. Ill. Jan. 30, 2007); *PML N. Am., LLC v. Hartford Underwriters Ins. Co.*, No. 05-CV-70404-DT, 2006 WL 3759914 (E.D. Mich. Dec. 20, 2006); *Phx. Four, Inc. v. Strategic Res. Corp.*, No. 05 Civ. 4837(HB), 2006 WL 1409413 (S.D.N.Y. May 23, 2006); *Adams v. Gateway, Inc.*, No. 2:02-CV-106, 2006 WL 2563418 (D. Utah Mar. 6, 2006) (ruling on de novo review of a magistrate judge's reports and recommendations and imposing sanctions); *McDowell v. District of Columbia*, 233 F.R.D. 192 (D.D.C. 2006); *Broccoli v. Echostar Commc'ns Corp.*, 229 F.R.D. 506 (D. Md. 2005); *Network Computing Servs. Corp. v. Cisco Sys., Inc.*, 223 F.R.D. 392 (D.S.C. 2004); *Hahn v. Minn. Beef Indus., Inc.*, No. 00-2282 RHKSRN, 2002 WL 32667146 (D. Minn. Mar. 8, 2002); *Mktg. Specialists, Inc. v. Bruni*, 129 F.R.D. 35 (W.D.N.Y. 1989), *aff'd*, 923 F.2d 843 (2d Cir. 1990); *Oscher v. Solomon Tropp Law Grp. (In re Atl. Int'l Mortg. Co.)*, 352 B.R. 503, 505 (Bankr. M.D. Fla. 2006).

45. *Grange Mut. Cas. Co. v. Mack*, 270 F. App'x 372 (6th Cir. 2008) (per curiam); *Stratienko v. Chattanooga-Hamilton Cnty. Hosp. Auth.*, No. 1:07-CV-258, 2009 WL 2168717 (E.D. Tenn. July 16, 2009); *Hanni v. Am. Airlines, Inc.*, No. C-08-00732 CW (EDL), 2009 WL 1505286 (N.D. Cal. May 27, 2009); *Grochocinski v. Schlossberg*, 402 B.R. 825 (N.D. Ill. 2009); *Gucci Am., Inc. v. Gucci*, No. 07 Civ. 6820(RMB)(JCF), 2009 WL 440463 (S.D.N.Y. Feb. 20, 2009); *Gamby v. First Nat'l Bank*, No. 06-11020, 2009 WL 127782 (E.D. Mich. Jan. 20), *objection denied*, 2009 WL 963116 (E.D. Mich. Apr. 8, 2009); *Super Future Equities, Inc. v. Wells Fargo Bank Minn., N.A.*, No. 3: 06-CV-0271-B, 2008 WL 3261095 (N.D. Tex. Aug. 8, 2008); *Aecon Bldgs., Inc. v. Zurich N. Am.*, 253 F.R.D. 655 (W.D. Wash. 2008); *Sterle v. Elizabeth Arden, Inc.*, No. 3:06 CV 01584(DJS), 2008 WL 961216 (D. Conn. Apr. 9, 2008); *MeccaTech, Inc. v. Kiser*, No. 8:05CV570, 2008 WL 6010937 (D. Neb. Apr. 2, 2008); *Perez-Farias v. Global Horizons, Inc.*, No. CV-05-3061-RHW, 2007 WL 2327073 (E.D. Wash. Aug. 10, 2007); *Mother, LLC v. L.L. Bean, Inc.*, No. C06-5540 JKA, 2007 WL 2302974 (W.D. Wash. Aug. 7, 2007); *Giant Screen Sports LLC v. Sky High Entm't*, No. 05 C 7184, 2007 WL 627607 (N.D. Ill. Feb. 27, 2007); *NSB U.S. Sales, Inc. v. Brill*, No. 04 Civ. 9240(RCC), 2007 WL 258181 (S.D.N.Y. Jan. 26, 2007); *Louis Vuitton Malletier, S.A. v. Dooney & Bourke, Inc.*, No. 04 Civ. 5316 RMB MHD, 2006 WL 3476735 (S.D.N.Y. Nov. 30, 2006); *Elion v. Jackson*, Civil Action No. 05-0992 (PLF), 2006 WL 2583694 (D.D.C. Sept. 8, 2006); *Cardenas v. Dorel Juvenile Grp., Inc.*, No. 04-2478,

Rule 37—generally or one of its subsections—was cited in a total of 136 of the 230 cases awarding sanctions. The court’s inherent authority was cited in thirty-six cases as the sole basis for sanctions⁴⁶

2006 WL 1537394 (D. Kan. June 1, 2006); *Martin v. Nw. Mut. Life Ins. Co.*, No. 804CV02328T23MAP, 2006 WL 148991 (M.D. Fla. Jan. 19, 2006); *Shank v. Kitsap County*, No. C04-5843RJB, 2005 WL 2099793 (W.D. Wash. Aug. 30, 2005); *Lyondell-Citgo Ref., LP v. Petroleos de Venez., S.A.*, No. 02 Civ. 0795(CBM), 2005 WL 1026461 (S.D.N.Y. May 2, 2005); *In re Telxon Corp. Sec. Litig.*, Nos. 5:98CV2876, 1:01CV1078, 2004 WL 3192729 (N.D. Ohio July 16, 2004); *Thompson v. U.S. Dep’t of Hous. & Urban Dev.*, 219 F.R.D. 93 (D. Md. 2003); *Black & Veatch Int’l Co. v. Foster Wheeler Energy Corp.*, 211 F.R.D. 641 (D. Kan. 2002); *GTFM, Inc. v. Wal-Mart Stores, Inc.*, No. 98 CIV. 7724 RPP, 2000 WL 335558 (S.D.N.Y. Mar. 30, 2000).

46. *United States v. Krause (In re Krause)*, Nos. 08-1132, 08-1136, 2009 WL 5064348 (D. Kan. Dec. 16, 2009); *Swofford v. Eslinger*, 671 F. Supp. 2d 1274 (M.D. Fla. 2009); *Pinstripe, Inc. v. Manpower, Inc.*, No. 07-CV-620-GKF-PJC, 2009 WL 2252131 (N.D. Okla. July 29, 2009); *Goodman v. Praxair Servs., Inc.*, 632 F. Supp. 2d 494 (D. Md. 2009); *Mullaney v. Hilton Hotels Corp.*, Civil No. 07-00313 ACK-LEK, 2009 WL 2006828 (D. Haw. June 30), *adopted as modified* by 2009 WL 2365561 (D. Haw. July 29, 2009); *Realnetworks, Inc. v. DVD Copy Control Ass’n*, 264 F.R.D. 517 (N.D. Cal. 2009); *Kvitka v. Puffin Co.*, No. 1:06-CV-0858, 2009 WL 385582 (M.D. Pa. Feb. 13, 2009); *SD Prot., Inc. v. Del Rio*, 587 F. Supp. 2d 429 (E.D.N.Y. 2008); *Dong Ah Tire & Rubber Co. v. Glasforms, Inc.*, No. C06-3359, 2008 WL 4786671 (N.D. Cal. Oct. 29, 2008); *Arteria Prop. Pty Ltd. v. Universal Funding V.T.O., Inc.*, No. 05-4896 (PGS), 2008 WL 4513696 (D.N.J. Oct. 1, 2008); *Johnson v. Wells Fargo Home Mortg., Inc.*, No. 3:05-CV-0321-RAM, 2008 WL 2142219 (D. Nev. May 16, 2008); *Wells v. Berger, Newmark & Fenchel, P.C.*, Civil Action No. 07 C 3061, 2008 WL 4365972 (N.D. Ill. Mar. 18, 2008); *Nucor Corp. v. Bell*, 251 F.R.D. 191 (D.S.C. 2008); *Auto. Inspection Servs., Inc. v. Flint Auto Auction, Inc.*, No. 06-15100, 2007 WL 3333016 (E.D. Mich. Nov. 9, 2007); *Paris Bus. Prods., Inc. v. Genisis Techs., LLC*, Civil No. 07-0260 (JBS), 2007 WL 3125184 (D.N.J. Oct. 24, 2007); *Google Inc. v. Am. Blind & Wallpaper Factory, Inc.*, No. C 03-5340 JF (RS), 2007 WL 1848665 (N.D. Cal. June 27, 2007); *World Courier v. Barone*, No. C 06-3072 TEH, 2007 WL 1119196 (N.D. Cal. Apr. 16, 2007); *Padgett v. City of Monte Sereno*, No. C 04-03946 JW, 2007 WL 878575 (N.D. Cal. Mar. 20, 2007); *Tilton v. McGraw-Hill Cos.*, No. C06-0098RSL, 2007 WL 777523 (W.D. Wash. Mar. 9, 2007); *Qantum Commc’ns Corp. v. Star Broad., Inc.*, 473 F. Supp. 2d 1249 (S.D. Fla. 2007); *Optowave Co. v. Nikitin*, No. 6:05-cv-1083-Orl-22DAB, 2006 WL 3231422 (M.D. Fla. Nov. 7, 2006); *In re Napster, Inc. Copyright Litig.*, 462 F. Supp. 2d 1060 (N.D. Cal. 2006); *Easton Sports, Inc. v. Warrior LaCrosse, Inc.*, No. 05-72031, 2006 WL 2811261 (E.D. Mich. Sept. 28, 2006); *Creative Sci. Sys., Inc. v. Forex Capital Mkts., LLC*, No. C 04-03746 JF (RS), 2006 WL 870973 (N.D. Cal. Apr. 4, 2006); *DaimlerChrysler Motors v. Bill Davis Racing, Inc.*, No. CIV.A. 03-72265, 2005 WL 3502172 (E.D. Mich. Dec. 22, 2005); *Mosaid Techs. Inc. v. Samsung Elecs. Co.*, 348 F. Supp. 2d 332 (D.N.J. 2004); *Leon v. IDX Sys. Corp.*, No. C03-1158P, 2004 WL 5571412 (W.D. Wash. Sept. 30, 2004), *aff’d*, 464 F.3d 951 (9th Cir. 2006); *AdvantaCare Health Partners, LP v. Access IV*, No. 03-04496, 2004 WL 1837997 (N.D. Cal. Aug. 17, 2004); *Brick v. HSBC Bank USA*, No. 04-CV-0129E(F), 2004 WL 1811430 (W.D.N.Y. Aug. 11, 2004); *Arista Records, Inc. v. Sakfield Holding Co.*, 314 F. Supp. 2d 27 (D.D.C. 2004); *GE Harris Ry. Elecs., L.L.C. v. Westinghouse Air Brake Co.*, No. 99-070-GMS, 2004 WL 5702740 (D. Del. Mar. 29, 2004); *Invision Media Commc’ns, Inc. v. Fed. Ins. Co.*, No. 02Civ.5461(NRB)(KNF), 2004 WL 396037 (S.D.N.Y. Mar. 2, 2004); *Trigon Ins. Co. v. United States*, 204 F.R.D. 277 (E.D. Va. 2001); *United States ex rel. Koch v. Koch Indus., Inc.*, 197 F.R.D. 463 (N.D. Okla. 1998); *Procter & Gamble Co. v. Haugen*, 179 F.R.D. 622 (D. Utah 1998), *aff’d in part and rev’d on other grounds*, 222 F.3d 1262 (10th Cir. 2000); *Hawaiian Airlines, Inc. v. Mesa Air Grp. (In re Hawaiian*

and cited in another seventy-two cases as one of multiple bases for sanctions. Rule 26 was cited as the sole basis for sanctions in four cases⁴⁷ and in combination with another rule in twenty-seven cases.⁴⁸ Section 1927 was cited in combination with another rule in two cases.⁴⁹

Airlines, Inc.), Bankr. No. 03-00817, Adv. No. 06-90026, 2007 WL 3172642 (Bankr. D. Haw. Oct. 30, 2007).

47. Plunk v. Village of Elwood, No. 07 C 88, 2009 WL 1444436 (N.D. Ill. May 20, 2009); Bd. of Regents v. BASF Corp., No. 4:04CV3356, 2007 WL 3342423 (D. Neb. Nov. 5, 2007); Wachtel v. Guardian Life Ins. Co., 239 F.R.D. 376 (D.N.J. 2006); E*Trade Sec. LLC v. Deutsche Bank AG, 230 F.R.D. 582 (D. Minn. 2005).

48. Travel Sentry, Inc. v. Tropp, 2009 WL 3859272 (E.D.N.Y. Nov. 18, 2009); Wixon v. Wyndham Resort Dev. Corp., No. C 07-02361 JSW, 2009 WL 3075649 (N.D. Cal. Sept. 21, 2009); Bray & Gillespie Mgmt. LLC v. Lexington Ins. Co. (*Bray & Gillespie II*), 259 F.R.D. 591 (M.D. Fla.), *rejected in part* by No. 6:07-cv-0222-Orl-35KRS, 2009 WL 5606058 (M.D. Fla., Nov. 11, 2009), *and adopted in part* by No. 6:07-cv-0222-Orl-35KRS, 2010 WL 55595 (M.D. Fla. Jan. 5, 2010); Arista Records, LLC v. Usenet.com, Inc., 633 F. Supp. 2d 124 (S.D.N.Y. 2009); Am. Friends of Yeshivat Ohr Yerushalayim, Inc. v. United States, No. 04-CV-1798, 2009 WL 1617773 (E.D.N.Y. June 9, 2009); Kipperman v. Onex Corp., 260 F.R.D. 682 (N.D. Ga. 2009); Adele S.R.L. v. Filene's Basement, Inc., No. 06 Civ. 244, 2009 WL 855955 (S.D.N.Y. Mar. 24, 2009); Smith v. Slifer Smith & Frampton/Vail Assocs. Real Estate, LLC, No. 06-cv-02206-JLK, 2009 WL 482603 (D. Colo. Feb. 25, 2009); Lessley v. City of Madison, No. 4:07-cv-136-DFH-WGH, 2008 WL 4977328 (S.D. Ind. Nov. 20, 2008); Canon U.S.A., Inc. v. S.A.M., Inc., No. 07-01201, 2008 WL 2522087 (E.D. La. June 20, 2008); R & R Sails, Inc. v. Ins. Co. of Pa., 251 F.R.D. 520 (S.D. Cal. 2008); *In re Rosenthal*, Civil Action No. H-04-186, 2008 WL 983702 (S.D. Tex. Mar. 28, 2008); Finley v. Hartford Life & Accident Ins. Co., 249 F.R.D. 329 (N.D. Cal. 2008); Fleming v. City of New York, No. 01 Civ. 8885, 2007 WL 4302501 (S.D.N.Y. Dec. 7, 2007); APC Filtration, Inc. v. Becker, No. 07 CV 1462, 2007 WL 3046233 (N.D. Ill. Oct. 12, 2007); Wingnut Films, Ltd. v. Katja Motion Pictures Corp., No. CV 05-1516-RSWL SHX, 2007 WL 2758571 (C.D. Cal. Sept. 18, 2007); *In re* Sept. 11th Liab. Ins. Coverage Cases, 243 F.R.D. 114 (S.D.N.Y. 2007); Claredi Corp. v. Seebeyond Tech. Corp., No. 4:04CV1304 RWS, 2007 WL 735018 (E.D. Mo. Mar. 8, 2007); Cache La Poudre Feeds, LLC v. Land O'Lakes, Inc., 244 F.R.D. 614 (D. Colo. 2007); May v. Pilot Travel Ctrs. LLC, No. 2:05-cv-918, 2006 WL 3827511 (S.D. Ohio Dec. 28, 2006); Ferrero v. Henderson, 341 F. Supp. 2d 873 (S.D. Ohio 2004), *withdrawn in part*, No. 3:00CV00462, 2005 WL 1802134 (S.D. Ohio July 28, 2005); Zubulake v. UBS Warburg LLC (*Zubulake V*), 229 F.R.D. 422 (S.D.N.Y. 2004); Marcin Eng'g, LLC v. Founders at Grizzly Ranch, LLC, 219 F.R.D. 516 (D. Colo. 2003); Metro. Opera Ass'n, Inc. v. Local 100, Hotel Emps. & Rest. Emps. Int'l Union, 212 F.R.D. 178 (S.D.N.Y. 2003), *adhered to on reconsideration* by No. 00 Civ. 3613(LAP), 2004 WL 1943099 (S.D.N.Y. Aug. 27, 2004); Poole *ex rel.* Elliot v. Textron, Inc., 192 F.R.D. 494 (D. Md. 2000); Nat'l Ass'n of Radiation Survivors v. Turnage, 115 F.R.D. 543 (N.D. Cal. 1987); Fagnant v. Cohen Steel Supply, Inc. (*In re Fagnant*), Nos. 03-10496-JMD, 03-1348-JMD, 2004 WL 2944126 (Bankr. D.N.H. Dec. 13, 2004).

49. Inst. for Motivational Living v. Doulos Inst. for Strategic Consulting 110 F. App'x 283 (3d Cir. 2004); Pharmacy Records v. Nassar (*Pharmacy Records II*), 572 F. Supp. 2d 869 (E.D. Mich. 2008).

D. E-Discovery Sanction Motions Are Awarded against Defendants More Often

Defendants are sanctioned for e-discovery violations nearly three times more often than plaintiffs. In our survey, defendants were sanctioned 175 times, plaintiffs were sanctioned fifty-three times, and third parties were sanctioned twice. The three-to-one ratio of defendant sanctions to plaintiff sanctions has generally held steady over the last ten years, even as the number of sanction cases and sanction awards has greatly increased.⁵⁰

III. FAILURE TO PRESERVE ESI IS THE MOST PREVALENT
SANCTIONABLE CONDUCT

The misconduct underlying a particular sanction award is sometimes a single type of misconduct, such as failure to preserve ESI or failure to produce ESI. More often it is a combination of multiple types of misconduct. In the 230 cases⁵¹ in which sanctions were awarded, the most common misconduct was failure to preserve ESI, which was the sole basis for sanctions in ninety cases. It was also cited as one of the types of misconduct in forty-six cases involving multiple misconduct. Failure to produce was the sole basis for sanctions in thirty-five cases and was mentioned in another sixty-seven cases involving multiple types of misconduct. Delay in production was the sole basis for sanctions in sixteen cases and mentioned in forty-five other cases involving multiple types of misconduct.

IV. COURTS HAVE USED A WIDE RANGE OF SANCTIONS FOR
E-DISCOVERY VIOLATIONS

Sanctions for e-discovery violations have varied greatly in type and severity depending on the circumstances of the case. For the most serious violations, courts have imposed the most draconian of sanctions: dismissal of all claims or defenses. Courts have also given adverse jury instructions and imposed monetary awards for serious e-discovery lapses. In cases of lesser violations, courts have used a continuum of penalties to punish the misconduct and remedy the resulting prejudice. Such penalties have included evidence

50. For the annual number of defendants and plaintiffs sanctioned, see *infra* Appendix B.

51. See *infra* Appendix C.

preclusion,⁵² witness preclusion,⁵³ disallowance of certain defenses,⁵⁴ reduced burden of proof,⁵⁵ removal of jury challenges,⁵⁶ limiting closing statements,⁵⁷ supplemental discovery,⁵⁸ and additional access to computer systems.⁵⁹ In some instances, more creative courts have imposed nontraditional sanctions, such as payments to bar

52. *See* *Shank v. Kitsap County*, No. C04-5843RJB, 2005 WL 2099793, at *4 (W.D. Wash. Aug. 30, 2005) (prohibiting the defendant from introducing digital audio recordings due to last-minute discovery compliance); *Thompson v. U.S. Dep't. of Hous. & Urban Dev.*, 219 F.R.D. 93, 104-05 (D. Md. 2003) (precluding the defendant from introducing eighty thousand email records produced after the court-imposed discovery deadlines).

53. *See* *R & R Sails, Inc. v. Ins. Co. of Pa.*, 251 F.R.D. 520, 528 (S.D. Cal. 2008) (precluding the defendant from introducing expert witness testimony that relied on ESI disclosed after the deadline imposed by the discovery order); *Elion v. Jackson*, Civil Action No. 05-0992 (PLF), 2006 WL 2583694, at *1-2 (D.D.C. Sept. 8, 2006) (precluding the defendant from offering any witness testimony regarding an email not disclosed in a timely fashion).

54. *See* *JPMorgan Chase Bank, N.A. v. Neovi, Inc.*, No. 2:06-CV-0095, 2007 WL 1514005, at *1 (S.D. Ohio May 16, 2007) (precluding the defense of lack of personal jurisdiction as a sanction for the defendant's failure to produce information concerning contacts with the state); *Kamatani v. BenQ Corp.*, Civil Action No. 2:03-CV-437, 2005 WL 2455825, at *15-16 (E.D. Tex. Oct. 4, 2005) (striking down defenses relating to a specific license agreement as a sanction for the defendant's bad faith representations to the court and its failure to produce the requested email documents); *Arista Records, Inc. v. Sakfield Holding Co.*, 314 F. Supp. 2d 27, 35 (D.D.C. 2004) (waiving the defense of lack of personal jurisdiction as a sanction for the defendant's failure to comply with the court's discovery orders).

55. *See* *Great Am. Ins. Co. v. Lowry Dev., LLC*, Civil Action Nos. 1:06CV097 LTS-RHW, 1:06CV412 LTS-RHW, 2007 WL 4268776, at *4 (S.D. Miss. Nov. 30, 2007) (reducing the burden of proof to a preponderance of the evidence standard as a sanction for the destruction of computer data in a contract case concerning mutual mistake).

56. *See* *Juniper Networks, Inc. v. Toshiba Am., Inc.*, No. 2:05-CV-479, 2007 WL 2021776, at *4 (E.D. Tex. July 11, 2007) (taking away two juror strikes from the defendant as a sanction for the defendant's intentional failure to produce electronic source code). In addition, the court limited the defendant's time for voir dire and opening statements to one-half the time allotted to the plaintiff, prohibited the defendant from offering any expert testimony regarding noninfringement, instructed the jury on the court's finding of intentionally withholding documents, and awarded attorneys' fees and costs resulting from the defendant's withholding of documents. *Id.*

57. *See id.* (limiting closing statements to one-third of the time allotted to the plaintiff as a sanction for the defendant's intentional failure to produce electronic code).

58. *See* *Preferred Care Partners Holding Corp. v. Humana, Inc.*, No. 08-20424-CIV, 2009 WL 982460, at *10 (S.D. Fla. Apr. 9, 2009) (permitting further depositions after emails were discovered one month before trial); *Lava Trading, Inc. v. Hartford Fire Ins. Co.*, No. 03 Civ.7037 PKC MHD, 2005 WL 459267, at *14 (S.D.N.Y. Feb. 24, 2005) (reopening discovery depositions due to emails produced after the close of expert discovery).

59. *See* *Sterle v. Elizabeth Arden, Inc.*, No. 3:06 CV 01584(DJS), 2008 WL 961216, at *10, *14 (D. Conn. Apr. 9, 2008) (granting the plaintiff permission to inspect electronic records as a sanction for the defense attorney's "obstructive tactics" during discovery); *Hahn v. Minn. Beef Indus., Inc.*, No. 00-2282 RHKSRN, 2002 WL 32667146, at *4 (D. Minn. Mar. 8, 2002) (ordering the reinspection of a computer database after inaccurate and incomplete information was provided).

associations to fund educational programs,⁶⁰ participation in court-created ethics programs,⁶¹ referrals to the state bar,⁶² payments to the clerk of court,⁶³ and barring the sanctioned party from taking additional depositions prior to compliance with the court's discovery order.⁶⁴

A. Dismissals

We identified thirty-six cases in which a terminating sanction of dismissal or default judgment was entered against a party for e-discovery violations. Twenty of these thirty-six dismissed cases involved failure to preserve evidence,⁶⁵ seven involved failure to

60. See *Pinstripe, Inc. v. Manpower, Inc.*, No. 07-CV-620-GKF-PJC, 2009 WL 2252131, at *4 (N.D. Okla. July 29, 2009) (ordering the defendant to pay \$2,500 to a bar association to support a seminar program on litigation hold orders and preserving electronic data).

61. See *Qualcomm Inc. v. Broadcom Corp.*, No. 05cv1958-B (BLM), 2008 WL 66932, at *18–19 (S.D. Cal. Jan. 7), (ordering the sanctioned attorneys to attend a court-created ethics program), *vacated in part*, 2008 WL 638108 (S.D. Cal. Mar. 5, 2008).

62. See *id.* at *17 (ordering the sanctioned attorneys to appear before the state bar for further ethical investigations).

63. See *Claredi Corp. v. Seebeyond Tech. Corp.*, No. 4:04CV1304 RWS, 2007 WL 735018, at *4 (E.D. Mo. Mar. 8, 2007) (ordering the defendant to pay \$20,000 to the clerk of court as a sanction for unnecessarily prolonging and increasing the expense of litigation); *Wachtel v. Health Net, Inc.*, 239 F.R.D. 81, 111 (D.N.J. 2006) (ordering the defendant to pay a fine to the clerk of court for “unnecessarily draining the court’s time and resources”); *Nat’l Ass’n of Radiation Survivors v. Turnage*, 115 F.R.D. 543, 559 (N.D. Cal. 1987) (ordering the defendant to pay \$15,000 to the clerk of court for consuming the court’s time and resources).

64. See *Edelen v. Campbell Soup Co.*, Civil Action No. 1:08-cv-00299-JOF-LTW, 2009 WL 4798117, at *3 (N.D. Ga. Dec. 8, 2009) (barring the plaintiff from taking depositions until it narrowed its electronic discovery requests).

65. *Peschel v. City of Missoula*, 664 F. Supp. 2d 1137 (D. Mont. 2009); *Kvitka v. Puffin Co.*, No. 1:06-CV-0858, 2009 WL 385582 (M.D. Pa. Feb. 13, 2009); *Gutman v. Klein*, No. 03 CV 1570(BMC)(RML), 2008 WL 4682208 (E.D.N.Y. Oct. 15), *adopted by* No. 03 Civ. 1570(BMC), 2008 WL 5084182 (E.D.N.Y. Dec. 2, 2008); *Atl. Recording Corp. v. Howell*, No. 06-CV-02076-PHX-NVW, 2008 WL 4080008 (D. Ariz. Aug. 29, 2008); *MeccaTech, Inc. v. Kiser*, No. 8:05CV570, 2008 WL 6010937 (D. Neb. Apr. 2, 2008), *adopted in part by* 2009 WL 1152267 (D. Neb. Apr. 23, 2009); *Pharmacy Records v. Nassar (Pharmacy Records I)*, 248 F.R.D. 507 (E.D. Mich. 2008), *aff’d*, 379 F. App’x 522 (6th Cir. 2010); *Columbia Pictures, Inc. v. Bunnell*, No. 2:06-cv-01093 FMC-JCx, 2007 WL 4877701 (C.D. Cal. Dec. 13, 2007); *Ameriwood Indus. v. Liberman*, No. 4:06CV524DJS, 2007 WL 5110313 (E.D. Mo. July 3, 2007); *Plasse v. Tyco Elecs. Corp.*, 448 F. Supp. 2d 302 (D. Mass. 2006); *Krumwiede v. Brighton Assocs.*, No. 05 C 3003, 2006 WL 1308629 (N.D. Ill. May 8, 2006); *Arista Records, L.L.C. v. Tschirhart*, 241 F.R.D. 462 (W.D. Tex. 2006); *Comm’n’s Ctr., Inc. v. Hewitt*, No. Civ.S-03-1968 WBS KJ, 2005 WL 3277983 (E.D. Cal. Apr. 5, 2005); *Leon v. IDX Sys. Corp.*, No. C03-1158P, 2004 WL 5571412 (W.D. Wash. Sept. 30, 2004), *aff’d*, 464 F.3d 951 (9th Cir. 2006); *Kucala Enters., Ltd. v. Auto Wax Co.*, No. 02 C 1403, 2003 WL 21230605, (N.D. Ill. May 27), *adopted as modified by* 2003 WL 22433095 (N.D. Ill. Oct. 27, 2003); *Century ML-Cable Corp. v. Carrillo*, 43 F. Supp. 2d 176 (D.P.R. 1998); *Cabinetware Inc. v. Sullivan*, No. 90-313 CLKK, 1991 WL 327959 (E.D. Cal. July

produce,⁶⁶ and nine involved both failure to preserve and failure to produce.⁶⁷ In sixteen cases, the court noted that the client, counsel, or both made misrepresentations to the court.⁶⁸ In imposing the most severe sanction of dismissal, twenty of thirty-six courts considered the prejudice to the opposing party resulting from the loss or failure to produce evidence, with eight courts describing the resulting prejudice as “serious[],”⁶⁹ “inalterabl[e],”⁷⁰ “severe[],”⁷¹ “substantial,”⁷² “unfair[],”⁷³ or “significant[].”⁷⁴

15, 1991); *Computer Assocs. Int’l, Inc. v. Am. Fundware, Inc.*, 133 F.R.D. 166 (D. Colo. 1990); *Wm. T. Thompson Co. v. Gen. Nutrition Corp.*, 593 F. Supp. 1443 (C.D. Cal. 1984); *United States v. Krause (In re Krause)*, 367 B.R. 740 (Bankr. D. Kan. 2007), *aff’d*, Nos. 08-1132, 08-1136, 2009 WL 5064348 (D. Kan. Dec. 16, 2009); *Quintus Corp. v. Avaya, Inc. (In re Quintus Corp.)*, 353 B.R. 77 (Bankr. D. Del. 2006), *aff’d in part*, Nos. 01-501, 01-502, 01-503, Adv. No. 04-53074, Civ. No. 06-769 SLR, 2007 WL 4233665 (D. Del. Nov. 29, 2007).

66. *Tech. Recycling Corp. v. City of Taylor*, 186 F. App’x 624 (6th Cir. 2006); *Computer Task Grp., Inc. v. Brotby*, 364 F.3d 1112 (9th Cir. 2004); *Crown Life Ins. Co. v. Craig*, 995 F.2d 1376 (7th Cir. 1993); 1100 W., LLC v. Red Spot Paint & Varnish Co., No. 1:05-cv-01670-LJM-JMS, 2009 WL 1605118 (S.D. Ind. June 5, 2009); *Gamby v. First Nat’l Bank*, No. 06-11020, 2009 WL 127782 (E.D. Mich. Jan. 20), *objection denied*, 2009 WL 963116 (E.D. Mich. Apr. 8, 2009); *Quantum Commc’ns Corp. v. Star Broad., Inc.*, 473 F. Supp. 2d 1249 (S.D. Fla. 2007); *Appraisal Mgmt. Co. III v. FNC, Inc.*, No. 1:04CV1158, 2005 WL 3088561 (N.D. Ohio Nov. 17, 2005).

67. *Grange Mut. Cas. Co. v. Mack*, 270 F. App’x 372 (6th Cir. 2008) (per curiam); *S. New Eng. Tel. Co. v. Global NAPs, Inc.*, 251 F.R.D. 82 (D. Conn. 2008), *aff’d*, No. 08-4518-cv, 2010 WL 3325962 (2d Cir. Aug. 25, 2010); *Koninklike Philips Elecs. N.V. v. KXD Tech., Inc.*, No. 2:05-cv-1532-RLH-GWF, 2007 WL 3101248 (D. Nev. Oct. 16, 2007), *appeal dismissed*, 539 F.3d 1039 (9th Cir. 2008); *Perez-Farias v. Global Horizons, Inc.*, No. CV-05-3061-RHW, 2007 WL 2327073 (E.D. Wash. Aug. 10, 2007); *Giant Screen Sports LLC v. Sky High Entm’t*, No. 05 C 7184, 2007 WL 627607 (N.D. Ill. Feb. 27, 2007); *PML N. Am., LLC v. Hartford Underwriters Ins. Co.*, No. 05-CV-70404-DT, 2006 WL 3759914 (E.D. Mich. Dec. 20, 2006); *Ridge Chrysler Jeep, LLC v. DaimlerChrysler Servs. N. Am. LLC*, No. 03 C 760, 2006 WL 2808158 (N.D. Ill. Sept. 6, 2006), *aff’d sub nom. Ridge Chrysler Jeep, LLC v. DaimlerChrysler Fin. Servs. Ams. LLC*, 516 F.3d 623 (7th Cir. 2008); *In re Telxon Corp. Sec. Litig.*, Nos. 5:98CV2876, 01:01CV1078, 2004 WL 3192729 (N.D. Ohio July 16, 2004); *Metro. Opera Ass’n v. Local 100, Hotel Emps. & Rest. Emps. Int’l Union*, 212 F.R.D. 178 (S.D.N.Y. 2003), *adhered to on reconsideration* by No. 00 Civ. 3613(LAP), 2004 WL 1943099 (S.D.N.Y. Aug. 27, 2004).

68. *Tech. Recycling*, 186 F. App’x at 627; *Crown Life*, 995 F.2d at 1383; *Red Spot*, 2009 WL 1605118, at *10; *Ail. Recording*, 2008 WL 4080008, at *1; *S. New Eng. Tel.*, 251 F.R.D. at 93–94; *Pharmacy Records I*, 248 F.R.D. at 530; *Columbia Pictures*, 2007 WL 4877701, at *8; *Koninklike Philips*, 2007 WL 3101248, at *13; *Perez-Farias*, 2007 WL 2327073, at *5; *Quantum*, 473 F. Supp. 2d at 1272; *Plasse*, 448 F. Supp. 2d at 308; *DaimlerChrysler*, 2006 WL 2808158, at *5; *Commc’ns Ctr.*, 2005 WL 3277983, at *2; *Telxon*, 2004 WL 3192729, at *20; *Metro. Opera*, 212 F.R.D. at 186; *Cabinetware*, 1991 WL 327959, at *2.

69. *Computer Assocs.*, 133 F.R.D. at 170.

70. *Columbia Pictures*, 2007 WL 4877701, at *5.

71. *Kvitka v. Puffin Co.*, No. 1:06-CV-0858, 2009 WL 385582, at *5 (M.D. Pa. Feb. 13, 2009); *Kucala Enters., Ltd. v. Auto Wax Co.*, No. 02 C 1403, 2003 WL 21230605, at *8 (N.D. Ill. May 27), *adopted as modified* by 2003 WL 22433095 (N.D. Ill. Oct. 27, 2003); *United States v. Krause (In re Krause)*, 367 B.R. 740, 770 (Bankr. D. Kan. 2007), *aff’d*, Nos. 08-1132, 08-1136,

In nineteen of the thirty-six cases, the court emphasized a pattern of misconduct.⁷⁵ The court often considered failure to preserve ESI or produce ESI in tandem with misrepresentations (or far-fetched explanations) to the court regarding how spoliation of data had occurred.⁷⁶ In some cases, spoliation of ESI was part of a pattern of repeated violations of multiple court orders and misrepresentations concerning discovery proceedings, including issues related to non-ESI document production and other non-ESI discovery issues.⁷⁷ When a

2009 WL 5064348 (D. Kan. Dec. 16, 2009).

72. *Arista Records, L.L.C. v. Tschirhart*, 241 F.R.D. 462, 465 (W.D. Tex. 2006).

73. *MeccaTech, Inc. v. Kiser*, No. 8:05CV570, 2008 WL 6010937, at *9 (D. Neb. Apr. 2, 2008).

74. *Ameriwood Indus. v. Liberman*, No. 4:06CV524-DJS, 2007 WL 5110313, at *7 (E.D. Mo. July 3, 2007).

75. *Grange Mut. Cas. Co. v. Mack*, 270 F. App'x 372 (6th Cir. 2008) (per curiam); *Computer Task Grp., Inc. v. Brotby*, 364 F.3d 1112 (9th Cir. 2004); *Crown-Life Ins. Co. v. Craig*, 995 F.2d 1376 (7th Cir. 1993); *1100 W., LLC v. Red Spot Paint & Varnish Co.*, No. 1:05-cv-01670-LJM-JML, 2009 WL 1605118 (S.D. Ind. June 5, 2009); *Gamby v. First Nat'l Bank*, No. 06-11020, 2009 WL 127782 (E.D. Mich. Jan. 20), *objection denied*, 2009 WL 963116 (E.D. Mich. Apr. 8, 2009); *Kvitka*, 2009 WL 385582, at *5; *Gutman v. Klein*, No. 03 CV 1570(BMC)(RML), 2008 WL 4682208 (E.D.N.Y. Oct. 15), *adopted by* No. 03 Civ. 1570(BMC), 2008 WL 5084182 (E.D.N.Y. Dec. 2, 2008); *S. New Eng. Tel. Co. v. Global NAPs, Inc.*, 251 F.R.D. 82 (D. Conn. 2008), *aff'd*, No. 08-4518-cv, 2010 WL 3325962 (2d Cir. Aug. 25, 2010); *Pharmacy Records v. Nassar (Pharmacy Records I)*, 248 F.R.D. 507 (E.D. Mich. 2008), *aff'd*, 379 F. App'x 522 (6th Cir. 2010); *Koninklike Philips Elecs. v. KXD Tech., Inc.*, No. 2:05-cv-1532-RLH-GWF, 2007 WL 3101248 (D. Nev. Oct. 16, 2007), *appeal dismissed*, 539 F.3d 1039 (9th Cir. 2008); *Perez-Farias v. Global Horizons, Inc.*, No. CV-05-3061-RHW, 2007 WL 2327073 (E.D. Wash. Aug. 10, 2007); *Quantum Commc'ns Corp. v. Star Broad., Inc.*, 473 F. Supp. 2d 1249 (S.D. Fla. 2007); *PML N. Am., LLC v. Hartford Underwriters Ins. Co.*, No. 05-CV-70404-DT, 2006 WL 3759914 (E.D. Mich. Dec. 20, 2006); *Plasse v. Tyco Elecs. Corp.*, 448 F. Supp. 2d 302 (D. Mass. 2006); *Ridge Chrysler Jeep, LLC v. DaimlerChrysler Servs. N. Am. LLC*, No. 03 C 760, 2006 WL 2808158 (N.D. Ill. Sept. 6, 2006), *aff'd sub nom. Ridge Chrysler Jeep, LLC v. DaimlerChrysler Fin. Servs. Ams. LLC*, 516 F.3d 623 (7th Cir. 2008); *In re Telxon Corp. Sec. Litig.*, Nos. 5:98CV2876, 1:01CV1078, 2004 WL 3192729 (N.D. Ohio July 16, 2004); *Kucala*, 2003 WL 21230605, at *8; *Century ML-Cable Corp. v. Carrillo*, 43 F. Supp. 2d 176 (D.P.R. 1998); *In re Krause*, 367 B.R. at 763.

76. *See, e.g., Crown Life*, 995 F.2d at 1382–85; *Kvitka*, 2009 WL 385582, at *3; *Columbia Pictures, Inc. v. Bunnell*, No. 2:06-cv-01093 FMC-JCx, 2007 WL 4877701, at *5–6 (C.D. Cal. Dec. 13, 2007); *Leon v. IDX Sys. Corp.*, No. C03-1158P, 2004 WL 5571412, at *3 (W.D. Wash. Sept. 30, 2004), *aff'd*, 464 F.3d 951 (9th Cir. 2006); *Wm. T. Thompson Co. v. Gen. Nutrition Corp.*, 593 F. Supp. 1443, 1446 (C.D. Cal. 1984).

77. *See, e.g., Grange Mut.*, 270 F. App'x at 373 (finding a judgment of liability against the defendant was warranted by the defendant's willful, prejudicial, and repeated obstruction of discovery and disregard of court orders); *Koninklike Philips*, 2007 WL 3101248, at *23 (noting a "consistent pattern of discovery delay and obstruction by Defendants directed at preventing Plaintiff from obtaining relevant evidence to prove its claims"); *Perez-Farias*, 2007 WL 2327073, at *12 (finding terminating sanctions were warranted when the defendant failed to provide discovery in violation of court orders, failed to pay the plaintiff's costs of bringing discovery

court did impose a terminating sanction solely for failure to preserve or produce ESI, that missing information was typically the key evidence needed to prove the claims or defenses in the action.⁷⁸

No cases resulted in dismissal when the court characterized the misconduct as mere negligence. In two of the thirty-six dismissal cases, the court characterized the conduct as gross negligence.⁷⁹ The remainder of the thirty-four cases involved some sort of willful conduct, with twenty involving bad faith.⁸⁰

This willful misconduct typically involved the modification or destruction of data through automated and manual file deletions or physical tampering with computer systems.⁸¹ Courts typically held that these actions involved deliberate and knowing actions to destroy data, that the conduct was far beyond simple negligence, and that the conduct was willful and intentional. Several courts noted the sinister

motions per the court's orders, neglected to pay sanctions of \$500 per day, and repeatedly failed to follow the court's local rules for filing documents); *Century ML-Cable*, 43 F. Supp. 2d at 185 (“[Defendant] has engaged in contumacious bad faith scorched earth defense tactics in a blatant effort to prevent plaintiffs from proving their case against him.”).

78. See, e.g., *Arista Records, L.L.C. v. Tschirhart*, 241 F.R.D. 462, 465 (W.D. Tex. 2006) (“By destroying the best evidence relating to the central issue in the case, defendant has inflicted the ultimate prejudice upon the plaintiffs.”); *Krumwiede v. Brighton Assocs.*, No. 05 C 3003, 2006 WL 1308629, at *10 (N.D. Ill. May 8, 2006) (finding the lost data were “evidence essential to” allegations of misappropriation of trade secrets); *Cabinetware Inc. v. Sullivan*, No. Civ. S. 90-313 CLKK, 1991 WL 327959, at *4 (E.D. Cal. July 15, 1991) (considering source code “essential evidence” in a copyright infringement action); *Computer Assocs. Int’l, Inc. v. Am. Fundware, Inc.*, 133 F.R.D. 166, 170 (D. Colo. 1990) (“Destroying the best evidence relating to the core issue in the case inflicts the ultimate prejudice upon the opposing party.”).

79. See *Gamby*, 2009 WL 127782, at *3 (“Defendant had been *grossly negligent, if not willful*, in failing to meet its discovery obligations . . .” (emphasis added)); *Kucala*, 2003 WL 21230605, at *7 (“Kucala was at fault by . . . acting with *gross negligence and in flagrant disregard of the court order . . .*” (emphasis added)).

80. *Grange Mut.*, 270 F. App’x at 376; *Tech. Recycling Corp. v. City of Taylor*, 186 F. App’x 624, 633 (6th Cir. 2006); *Peschel v. City of Missoula*, 664 F. Supp. 2d 1137, 1146–47 (D. Mont. 2009); *Red Spot*, 2009 WL 1605118, at *27–28; *Kvitka*, 2009 WL 385582, at *6; *Gutman*, 2008 WL 4682208, at *8; *S. New Eng. Tel.*, 251 F.R.D. at 92; *MeccaTech, Inc. v. Kiser*, No. 8:05CV570, 2008 WL 6010937, at *9 (D. Neb. Apr. 2, 2008); *Pharmacy Records I*, 248 F.R.D. at 529; *Koninklike Philips*, 2007 WL 3101248, at *2–3; *Perez-Farias*, 2007 WL 2327073, at *9; *Ameriwood Indus. v. Liberman*, No. 4:06CV524-DJS, 2007 WL 5110313, at *6 (E.D. Mo. July 3, 2007); *Qantum*, 473 F. Supp. 2d at 1261; *Tschirhart*, 241 F.R.D. at 464; *Krumwiede*, 2006 WL 1308629, at *8; *Comm’ns Ctr., Inc. v. Hewitt*, No. Civ.S-03-1968 WBS KJ, 2005 WL 3277983, at *2 (E.D. Cal. Apr. 5, 2005); *Leon*, 2004 WL 5571412, at *4; *Telxon*, 2004 WL 3192729, at *26; *Metro. Opera Ass’n v. Local 100, Hotel Emps. & Rest. Emps. Int’l Union*, 212 F.R.D. 178, 181 (S.D.N.Y. 2003), *adhered to on reconsideration* by No. 00 Civ. 3613(LAP), 2004 WL 1943099 (S.D.N.Y. Aug. 27, 2004); *Wm. T. Thompson Co.*, 593 F. Supp. at 1456.

81. See, e.g., *Atl. Recording Corp. v. Howell*, No. 06-CV-02076-PHX-NVW, 2008 WL 4080008, at *1 (D. Ariz. Aug. 29, 2008); *Comm’ns Ctr.*, 2005 WL 3277983, at *2–3; *Kucala*, 2003 WL 21230605, at *2; *Cabinetware*, 1991 WL 327959, at *2.

name of the software deletion program that the sanctioned party used, such as “Evidence Eliminator,”⁸² “Wipe & Delete,”⁸³ and “GhostSurf,”⁸⁴ in demonstrating the egregious nature of the misconduct. As the court noted in *Metropolitan Opera*, the misconduct during discovery “was not merely negligent but was aggressively willful” and constituted “such gross negligence as to rise to intentional misconduct.”⁸⁵

In dismissing these cases, courts considered a variety of rules, statutes, and sources of authority, often in conjunction with each other. Most prevalent was the use of Rule 37(b) in conjunction with the court’s inherent power (fifteen cases),⁸⁶ followed by Rule 37(b) by itself (eleven cases).⁸⁷ In five other cases, the court relied only on its

82. *Commc’ns Ctr.*, 2005 WL 3277983, at *1; *Kucala*, 2003 WL 21230605, at *1.

83. *Atl. Recording*, 2008 WL 4080008, at *1.

84. *United States v. Krause (In re Krause)*, 367 B.R. 740, 748 (Bankr. D. Kan. 2007), *aff’d*, Nos. 08-1132, 08-1136, 2009 WL 5064348 (D. Kan. Dec. 16, 2009)

85. *Metro. Opera*, 212 F.R.D. at 222; *see also Pharmacy Records I*, 248 F.R.D. at 530 (“The actions of the plaintiffs and their attorney in this case are so egregious that they have forfeited their right to proceed in court.”); *id.* at 531 (“[C]onsidering [the actions] . . . invariably leads to the conclusion that the plaintiffs and their attorney have conducted a campaign of fraud.”); *PML N. Am., LLC v. Hartford Underwriters Ins. Co.*, No. 05-CV-70404-DT, 2006 WL 3759914, at *5 (E.D. Mich. Dec. 20, 2006) (“[T]here is a point beyond which bumbling and blindness to a party’s discovery obligations sufficiently resemble the sort of willful, intentional and malicious conduct that calls for the heavy sanction of judgment by default.”); *Telxon*, 2004 WL 3192729, at *33 (“The only conclusion . . . is that [the defendant] and/or its counsel engaged in deliberate fraud or was so recklessly indifferent to their responsibilities . . . that they failed to take the most basic steps to fulfill those responsibilities.”).

86. *1100 W., LLC v. Red Spot Paint & Varnish Co.*, No. 1:05-cv-01670-LJM-JMS, 2009 WL 1605118, at *26 (S.D. Ind. June 5, 2009); *Gutman v. Klein*, No. 03 CV 1570(BMC)(RML), 2008 WL 4682208, at *11 (E.D.N.Y. Oct. 15), *adopted by* No. 03 Civ. 1570(BMC), 2008 WL 5084182 (E.D.N.Y. Dec. 2, 2008); *Atl. Recording*, 2008 WL 4080008, at *1; *S. New Eng. Tel. Co. v. Global NAPs, Inc.*, 251 F.R.D. 82, 90 (D. Conn. 2008), *aff’d*, No. 08-4518-cv, 2010 WL 3325962 (2d Cir. Aug. 25, 2010); *Columbia Pictures, Inc. v. Bunnell*, No. 2:06-cv-01093 FMC-JCx, 2007 WL 4877701, at *5 (C.D. Cal. Dec. 13, 2007); *Koninklike Philips Elecs. N.V. v. KXD Tech., Inc.*, No. 2:05-cv-1532-RLH-GWF, 2007 WL 3101248, at *12–13 (D. Nev. Oct. 16, 2007), *appeal dismissed*, 539 F.3d 1039 (9th Cir. 2008); *Ameriwood Indus. v. Liberman*, No. 4:06CV524-DJS, 2007 WL 5110313, at *4 (E.D. Mo. July 3, 2007); *Arista Records, L.L.C. v. Tschirhart*, 241 F.R.D. 462, 464 (W.D. Tex. 2006); *Krumwiede v. Brighton Assocs.*, No. 05 C 3003, 2006 WL 1308629, at *9 (N.D. Ill. May 8, 2006); *Century ML-Cable Corp. v. Carrillo*, 43 F. Supp. 2d 176, 182–83 (D.P.R. 1998); *Cabinetware*, 1991 WL 327959, at *3; *Computer Assocs. Int’l, Inc. v. Am. Fundware, Inc.*, 133 F.R.D. 166, 168 (D. Colo. 1990); *Wm. T. Thompson Co. v. Gen. Nutrition Corp.*, 593 F. Supp. 1443, 1455 (C.D. Cal. 1984); *In re Krause*, 367 B.R. at 746 (citing 11 U.S.C. § 105 on the inherent power of a bankruptcy court); *Quintus Corp. v. Avaya, Inc. (In re Quintus Corp.)*, 353 B.R. 77, 92 (Bankr. D. Del. 2006), *aff’d in part*, Nos. 01-501, 01-502, 01-503, Adv. 04-53074, Civ. 06-769 SLR, 2007 WL 4233665 (D. Del. Nov. 29, 2007).

87. *Peschel v. City of Missoula*, 664 F. Supp. 2d 1137, 1141–42 (D. Mont. 2009); *Grange Mut. Cas. Co. v. Mack*, 270 F. App’x 372, 376 (6th Cir. 2008) (per curiam); *Tech. Recycling*

inherent power.⁸⁸ Courts have also combined Rule 37 and Rule 26 to dismiss two cases.⁸⁹ Rule 37 was coupled with Rule 41 twice.⁹⁰

Twenty-three of the thirty-six dismissed cases involved violations of discovery orders, most notably discovery orders granted to compel the production of the very ESI that was destroyed.⁹¹ Twenty-seven cases involved violations of motions to compel or other discovery orders.⁹² Two involved violations of temporary restraining orders or preliminary injunctions.⁹³

Corp. v. City of Taylor, 186 F. App'x 624, 633, 631 (6th Cir. 2006); Computer Task Grp., Inc. v. Brothby, 364 F.3d 1112, 1115–17 (9th Cir. 2004); Crown-Life Ins. Co. v. Craig, 995 F.2d 1376, 1381–84 (7th Cir. 1993); Gamby v. First Nat'l Bank, No. 06-11020, 2009 WL 127782, at *2 (E.D. Mich. Jan. 20), *objection denied*, 2009 WL 963116 (E.D. Mich. Apr. 8, 2009); Perez-Farias v. Global Horizons, Inc., No. CV-05-3061-RHW, 2007 WL 2327073, at *9 (E.D. Wash. Aug. 10, 2007); Giant Screen Sports LLC v. Sky High Entm't, No. 05 C 7184, 2007 WL 627607, at *2-3 (N.D. Ill. Feb. 27, 2007); *PML*, 2006 WL 3759914, at *2-4; *Commc'ns Ctr.*, 2005 WL 3277983, at *1; *Telxon*, 2004 WL 3192729, at *19–21.

88. Kvitka v. Puffin Co., No. 1:06-CV-0858, 2009 WL 385582, at *3 (M.D. Pa. Feb. 13, 2009); *Pharmacy Records I*, 248 F.R.D. at 529; *Qantum Commc'ns Corp. v. Star Broad., Inc.*, 473 F. Supp. 2d 1249, 1268 (S.D. Fla. 2007); *Plasse v. Tyco Elecs. Corp.*, 448 F. Supp. 2d 302, 308–11 (D. Mass. 2006); *Leon v. IDX Sys. Corp.*, No. C03-1158P, 2004 WL 5571412, at *3 (W.D. Wash. Sept. 30, 2004), *aff'd*, 464 F.3d 951 (9th Cir. 2006).

89. *Kucala Enters., Ltd. v. Auto Wax Co.*, No. 02 C 1403, 2003 WL 21230605, at *4 (N.D. Ill. May 27), *adopted as modified* by 2003 WL 22433095 (N.D. Ill. Oct. 27, 2003); *Metro. Opera*, 212 F.R.D. at 219–20 (citing 28 U.S.C § 1927 to sanction counsel and also relying on the court's inherent power).

90. *Ridge Chrysler Jeep, LLC v. DaimlerChrysler Servs. N. Am. LLC*, No. 03 C 760, 2006 WL 2808158, at *8 (N.D. Ill. Sept. 6, 2006), *aff'd sub nom.* *Ridge Chrysler Jeep, LLC v. DaimlerChrysler Fin. Servs. Ams. LLC*, 516 F.3d 623 (7th Cir. 2008); *Appraisal Mgmt. Co. III v. FNC, Inc.*, No. 1:04CV1158, 2005 WL 3088561, at *7 (N.D. Ohio Nov. 17, 2005).

91. *Grange Mut.*, 270 F. App'x 372; *Tech. Recycling*, 186 F. App'x 624; *Crown Life*, 995 F.2d 1376; *Gamby*, 2009 WL 127782; *Gutman*, 2008 WL 4682208; *Atl. Recording*, 2008 WL 4080008; *S. New Eng. Tel.*, 251 F.R.D. 82; *Koninklike Philips*, 2007 WL 3101248; *Perez-Farias*, 2007 WL 2327073; *Ameriwood*, 2007 WL 5110313; *Giant Screen*, 2007 WL 627607; *PML*, 2006 WL 3759914; *Plasse*, 448 F. Supp. 2d 302; *Tschirhart*, 241 F.R.D. 462; *Krumwiede*, 2006 WL 1308629; *Appraisal Mgmt.*, 2005 WL 3088561; *Commc'ns Ctr.*, 2005 WL 3277983; *Kucala*, 2003 WL 21230605; *Telxon*, 2004 WL 3192729; *Metro. Opera*, 212 F.R.D. 178; *Century ML-Cable*, 43 F. Supp. 2d 176; *Wm. T. Thompson Co.*, 593 F. Supp. 1443; *In re Krause*, 367 B.R. 740. One court noted that Rule 37(b)(2)(C) could not be a basis for a dismissal absent a violation of a court order. *Pharmacy Records I*, 248 F.R.D. at 529.

92. *Tech. Recycling*, 186 F. App'x 624; *Computer Task Grp.*, 364 F.3d 1112; *Crown Life*, 995 F.2d 1376; 1100 W., LLC v. Red Spot Paint & Varnish Co., No. 1:05-cv-01670-LJM-JMS, 2009 WL 1605118 (S.D. Ind. June 5, 2009); *Gamby*, 2009 WL 963116; *Gutman*, 2008 WL 4682208; *Atl. Recording*, 2008 WL 4080008; *S. New Eng. Tel.*, 251 F.R.D. 82; *MeccaTech, Inc. v. Kiser*, No. 8:05CV570, 2008 WL 6010937 (D. Neb. Apr. 2, 2008); *Koninklike Philips*, 2007 WL 3101248; *Perez-Farias*, 2007 WL 2327073; *Ameriwood*, 2007 WL 5110313; *Qantum*, 473 F. Supp. 2d 1249; *PML*, 2006 WL 3759914; *Plasse*, 448 F. Supp. 2d 302; *Tschirhart*, 241 F.R.D. 462; *Krumwiede*, 2006 WL 1308629; *Appraisal Mgmt.*, 2005 WL 3088561; *Commc'ns Ctr.*, 2005 WL 3277983; *Leon*, 2004 WL 5571412; *Kucala*, 2003 WL 21230605; *Telxon*, 2004 WL 3192729; *Metro. Opera*,

Although courts have imposed sanctions of dismissal in a total of thirty-six cases involving e-discovery violations, the number of dismissals per year since 2006 has slightly decreased, from seven in 2006 to five in 2009.⁹⁴ Courts continue to reserve terminating sanctions for only the most egregious of cases. In these terminated cases, the misconduct typically occurred after repeated warnings and after repeated willful failures that irreparably compromised the court's ability to adjudicate on the merits, leaving no alternative but dismissal.

B. Adverse Jury Instructions

In fifty-two cases, courts sanctioned parties for e-discovery violations by issuing adverse jury instructions. Courts deferred judgment on this issue in another ten cases. Forty of the fifty-two cases in which adverse jury instructions were awarded occurred between 2006 and 2009.

The cases in which adverse jury instructions were issued included forty-three cases involving failure to preserve,⁹⁵ four cases involving

212 F.R.D. 178; *Cabinetware Inc. v. Sullivan*, No. 90-313 CLKK, 1991 WL 327959, (E.D. Cal. July 15, 1991); *Wm. T. Thompson Co.*, 593 F. Supp. 1443; *In re Krause*, 367 B.R. 740; *Quintus Corp. v. Avaya, Inc.* (*In re Quintus Corp.*), 353 B.R. 77 (Bankr. D. Del. 2006), *aff'd in part*, Nos. 01-501, 01-502, 01-503, Adv. No. 04-53074, Civ. No. 06-769 SLR, 2007 WL 4233665 (D. Del. Nov. 29, 2007).

93. *DaimlerChrysler*, 2006 WL 2808158; *Century ML-Cable*, 43 F. Supp. 2d 176.

94. For the annual number of dismissals, see *infra* Appendix B.

95. *Stevenson v. Union Pac. R.R. Co.*, 354 F.3d 739 (8th Cir. 2004); *Minn. Mining & Mfg. Co. v. Pribyl*, 259 F.3d 587 (7th Cir. 2001); *Swofford v. Eslinger*, 671 F. Supp. 2d 1274 (M.D. Fla. 2009); *Se. Mech. Servs., Inc. v. Brody (Brody II)*, 657 F. Supp. 2d 1293 (M.D. Fla. 2009); *KCH Servs., Inc. v. Vanaire, Inc.*, No. 05-777, 2009 WL 2216601 (W.D. Ky. July 22, 2009); *Goodman v. Praxair Servs.*, 632 F. Supp. 2d 494 (D. Md. 2009); *Arista Records, LLC v. Usenet.com, Inc.*, 633 F. Supp. 2d 124 (S.D.N.Y. 2009); *Plunk v. Village of Elwood*, No. 07 C 88, 2009 WL 1444436 (N.D. Ill. May 20, 2009); *Technical Sales Assocs. v. Ohio Star Forge Co.*, No. 07-11745, 2009 WL 728520 (E.D. Mich. Mar. 19, 2009); *TeleQuest Int'l Corp. v. Dedicated Bus. Sys. Inc.*, Civ. Action No. 06-5359 (PGS), 2009 WL 690996 (D.N.J. Mar. 11, 2009); *Smith v. Slifer Smith & Frampton/Vail Assocs. Real Estate LLC*, No. 06-cv-02206-JLK, 2009 WL 482603 (D. Colo. Feb. 25, 2009); *Am. Family Mut. Ins. Co. v. Roth*, No. 05 C 3839, 2009 WL 982788 (N.D. Ill. Feb. 20, 2009); *Kvitka v. Puffin Co.*, No. 1:06-CV-0858, 2009 WL 385582 (M.D. Pa. Feb. 13, 2009); *Fox v. Riverdeep, Inc.*, No. 07-CV-13622, 2008 WL 5244297 (E.D. Mich. Dec. 16, 2008); *Dong Ah Tire & Rubber Co. v. Glasforms, Inc.*, No. C06-3359, 2008 WL 4786671 (N.D. Cal. Oct. 29, 2008); *Dowling v. United States*, No. 2000-CV-0049, 2008 WL 4534174 (D.V.I. Oct. 6, 2008); *Arteria Prop. Pty Ltd. v. Universal Funding V.T.O., Inc.*, No. 05-4896 (PGS), 2008 WL 4513696 (D.N.J. Oct. 1, 2008); *Nursing Home Pension Fund v. Oracle Corp.*, 254 F.R.D. 559 (N.D. Cal. 2008); *Babaev v. Grossman*, No. CV03-5076, 2008 WL 4185703 (E.D.N.Y. Sept. 8, 2008); *Keithley v. Home Store.com, Inc.*, No. 03-04447 SI (EDL), 2008 WL 3833384 (N.D. Cal. Aug. 12, 2008); *Ogin v. Ahmed*, 563 F. Supp. 2d 539 (M.D. Pa. 2008); *Johnson v. Wells Fargo Home Mortg.*,

failure to produce,⁹⁶ and five cases involving both.⁹⁷ The defendant was sanctioned with an adverse jury instruction in forty-four cases,⁹⁸ while the plaintiff was so sanctioned in only eight cases.⁹⁹

Inc., No. 3:05-CV-0321-RAM, 2008 WL 2142219 (D. Nev. May 16, 2008); *Wells v. Berger, Newmark & Fenchel, P.C.*, Civil Action No. 07 C 3061, 2008 WL 4365972 (N.D. Ill. Mar. 18, 2008); *Connor v. Sun Trust Bank*, 546 F. Supp. 2d 1360 (N.D. Ga. 2008); *Nucor Corp. v. Bell*, 251 F.R.D. 191 (D.S.C. 2008); *Kounelis v. Sherrer*, 529 F. Supp. 2d 503 (D.N.J. 2008); *Great Am. Ins. Co. v. Lowry Dev., LLC*, Civil Action Nos. 106CV097, 1:06CV412, 2007 WL 4268776 (S.D. Miss. Nov. 30, 2007); *Paris Bus. Prods. v. Genisis Techs., LLC*, Civil No. 07-0260 (JBS), 2007 WL 3125184 (D.N.J. Oct. 24, 2007); *Cyntegra, Inc. v. Idexx Labs., Inc.*, No. CV 06-4170 PSG (CTx), 2007 WL 5193736 (C.D. Cal. Sept. 21, 2007), *aff'd*, 322 F. App'x 569 (9th Cir. 2009); *Doe v. Norwalk Cmty. Coll.*, 248 F.R.D. 372 (D. Conn. 2007); *World Courier v. Barone*, No. C 06-3072 TEH, 2007 WL 1119196 (N.D. Cal. Apr. 16, 2007); *Teague v. Target Corp.*, No. 3:06CV191, 2007 WL 1041191 (W.D.N.C. Apr. 4, 2007); *Optowave Co. v. Nikitin*, No. 6:05-cv-1083-Orl-22DAB, 2006 WL 3231422 (M.D. Fla. Nov. 7, 2006); *In re Napster, Inc. Copyright Litig.*, 462 F. Supp. 2d 1060 (N.D. Cal. 2006); *Easton Sports, Inc. v. Warrior LaCrosse, Inc.*, No. 05-72031, 2006 WL 2811261 (E.D. Mich. Sept. 28, 2006); *DaimlerChrysler Motors v. Bill Davis Racing, Inc.*, No. CIV.A. 03-72265, 2005 WL 3502172 (E.D. Mich. Dec. 22, 2005); *Larson v. Bank One Corp.*, No. 00 C 2100, 2005 WL 4652509 (N.D. Ill. Aug. 18, 2005); *E*Trade Sec. LLC v. Deutsche Bank AG*, 230 F.R.D. 582 (D. Minn. 2005); *Hous. Rights Ctr. v. Sterling*, No. CV 03-859 DSF, 2005 WL 3320739 (C.D. Cal. Mar. 2, 2005); *Mosaid Techs. Inc. v. Samsung Elecs. Co.*, 348 F. Supp. 2d 332 (D.N.J. 2004); *Zubulake v. UBS Warburg LLC (Zubulake V)*, 229 F.R.D. 422 (S.D.N.Y. 2004); *Anderson v. Crossroads Capital Partners, LLC*, No. 01-2000, 2004 WL 256512 (D. Minn. Feb. 10, 2004); *Danis v. USN Commc'ns, Inc.*, No. 98 C 7482, 2000 WL 1694325 (N.D. Ill. Oct. 23, 2000).

96. *Juniper Networks Inc. v. Toshiba Am. Inc.*, No. 2:05-CV-479, 2007 WL 2021776 (E.D. Tex. July 11, 2007); *z4 Techs., Inc. v. Microsoft Corp.*, No. 6:06-CV-142, 2006 WL 2401099 (E.D. Tex. Aug. 18, 2006), *aff'd*, 507 F.3d 1340 (Fed. Cir. 2007); *Lyondell-Citgo Ref., LP v. Petroleos de Venez., S.A.*, No. 02 Civ. 0795(CBM), 2005 WL 1026461 (S.D.N.Y. May 2, 2005); *Network Computing Servs. Corp. v. Cisco Sys.*, 223 F.R.D. 392 (D.S.C. 2004).

97. *Lewis v. Ryan*, No. 04-CV-2468-JLS (NLS), 2009 WL 3486702 (S.D. Cal. Oct. 23, 2009); *Metrokane, Inc. v. Built NY, Inc.*, Nos. 06 Civ. 14447(LAK)(MHD), 07 Civ. 2084(LAK)(MHD), 2008 WL 4185865 (S.D.N.Y. Sept. 3, 2008); *Super Future Equities, Inc. v. Wells Fargo Bank*, No. 3: 06-CV-0271-B, 2008 WL 3261095 (N.D. Tex. Aug. 8, 2008); *In re NTL, Inc. Sec. Litig.*, 244 F.R.D. 179 (S.D.N.Y. 2007), *aff'd sub nom. Gordon Partners v. Blumenthal*, No. 02 Civ. 7377(LAK), 2007 WL 1518632 (S.D.N.Y. May 17, 2007); *3M Innovative Prods. Co. v. Tomar Elecs.*, Civ. No. 05-756(MJP/AJB), 2006 WL 2670038 (D. Minn. Sept. 18, 2006).

98. *Stevenson*, 354 F.3d 739; *Minn. Mining & Mfg. Co.*, 259 F.3d 587; *Lewis*, 2009 WL 3486702; *Swofford*, 671 F. Supp. 2d 1274; *Brody II*, 657 F. Supp. 2d 1293; *KCH Servs.*, 2009 WL 2216601; *Goodman*, 632 F. Supp. 2d 494; *Usenet.com*, 633 F. Supp. 2d 124; *Plunk*, 2009 WL 1444436; *Technical Sales Assocs.*, 2009 WL 728520; *TeleQuest Int'l*, 2009 WL 690996; *Smith*, 2009 WL 482603; *Am. Family Mut.*, 2009 WL 982788; *Fox*, 2008 WL 5244297; *Dong Ah Tire*, 2008 WL 4786671; *Dowling*, 2008 WL 4534174; *Arteria*, 2008 WL 4513696; *Nursing Home Pension Fund*, 254 F.R.D. 559; *Babaev*, 2008 WL 4185703; *Keithley*, 2008 WL 3833384; *Ogin*, 563 F. Supp. 2d 539; *Wells*, 2008 WL 4365972; *Connor*, 546 F. Supp. 2d 1360; *Nucor*, 251 F.R.D. 191; *Kounelis*, 529 F. Supp. 2d 503; *Great Am. Ins. Co.*, 2007 WL 4268776; *Paris Bus. Prods.*, 2007 WL 3125184; *Doe*, 248 F.R.D. 372; *Juniper Networks*, 2007 WL 2021776; *World Courier*, 2007 WL 1119196; *In re NTL*, 244 F.R.D. 179; *Optowave*, 2006 WL 3231422; *Napster*, 462 F. Supp. 2d 1060; *Easton Sports*, 2006 WL 2811261; *3M Innovative Prods.*, 2006 WL 2670038; *z4 Techs.*, 2006 WL 2401099; *DaimlerChrysler Motors*, 2005 WL 3502172; *Larson*, 2005 WL 4652509; *Lyondell-*

The level of misconduct justifying the adverse jury instructions varied across the fifty-two cases. Four cases involved negligence,¹⁰⁰ ten cases involved gross negligence;¹⁰¹ three cases involved reckless disregard;¹⁰² and thirty-four cases involved intentional conduct, bad faith, or both.¹⁰³ One case did not provide information concerning the level of misconduct.¹⁰⁴

The courts used their inherent power and the Federal Rules of Civil Procedure, both separately and in conjunction with each other, to impose the sanctions. The inherent power of the court was cited in fourteen cases as the sole basis for sanction¹⁰⁵ and in twenty other cases in which multiple bases for sanctioning were cited.¹⁰⁶ Rule 37

Citgo, 2005 WL 1026461; *E*Trade*, 230 F.R.D. 582; *Hous. Rights Ctr.*, 2005 WL 3320739; *Mosaid Techs.*, 348 F. Supp. 2d 332; *Zubulake V*, 229 F.R.D. 422; *Danis*, 2000 WL 1694325.

99. *Kvitka*, 2009 WL 385582; *Metrokane*, 2008 WL 4185865; *Super Future Equities*, 2008 WL 3261095; *Johnson*, 2008 WL 2142219; *Cyntegra*, 2007 WL 5193736; *Teague*, 2007 WL 1041191; *Network Computing Servs.*, 223 F.R.D. 392; *Anderson*, 2004 WL 256512.

100. *Dowling*, 2008 WL 4534174; *Cyntegra*, 2007 WL 5193736; *Easton Sports*, 2006 WL 2811261; *DaimlerChrysler Motors*, 2005 WL 3502172.

101. *Lewis v. Ryan*, 261 F.R.D. 513 (S.D. Cal. 2009); *Fox*, 2008 WL 5244297; *Doe*, 248 F.R.D. 372; *Teague*, 2007 WL 1041191; *In re NTL*, 244 F.R.D. 179; *Napster*, 462 F. Supp. 2d 1060; *Larson*, 2005 WL 4652509; *Hous. Rights Ctr.*, 2005 WL 3320739; *Mosaid Techs.*, 348 F. Supp. 2d 332; *Danis*, 2000 WL 1694325.

102. *Plunk*, 2009 WL 1444436; *Dong Ah Tire*, 2008 WL 4786671; *Keithley*, 2008 WL 3833384.

103. *Stevenson*, 354 F.3d 739; *Swofford*, 671 F. Supp. 2d 1274; *Smith*, 2009 WL 482603; *Kvitka*, 2009 WL 385582; *Usenet.com*, 633 F. Supp. 2d 124; *Brody II*, 657 F. Supp. 2d at 1293; *KCH Servs.*, 2009 WL 2216601; *Goodman*, 632 F. Supp. 2d 494; *Technical Sales Assocs.*, 2009 WL 728520; *Arteria*, 2008 WL 4513696; *Metrokane*, 2008 WL 4185865; *Kounelis*, 529 F. Supp. 2d 503; *Wells*, 2008 WL 4365972; *TeleQuest Int'l*, 2009 WL 690996; *Am. Family Mut.*, 2009 WL 982788; *Babaev*, 2008 WL 4185703; *Nursing Home Pension Fund*, 254 F.R.D. 559; *Super Future Equities*, 2008 WL 3261095; *Ogin*, 563 F. Supp. 2d 539; *Johnson*, 2008 WL 2142219; *Connor*, 546 F. Supp. 2d 1360; *Nucor*, 251 F.R.D. 191; *Great Am. Ins. Co.*, 2007 WL 4268776; *Paris Bus. Prods.*, 2007 WL 3125184; *Juniper Networks*, 2007 WL 2021776; *World Courier*, 2007 WL 1119196; *Optowave*, 2006 WL 3231422; *3M Innovative Prods.*, 2006 WL 2670038; *z4 Techs.*, 2006 WL 2401099; *E*Trade*, 230 F.R.D. 582; *Lyondell-Citgo*, 2005 WL 1026461; *Network Computing Servs.*, 223 F.R.D. 392; *Zubulake V*, 229 F.R.D. 422; *Anderson*, 2004 WL 256512.

104. *Minn. Mining & Mfg. Co. v. Pribyl*, 259 F.3d 587 (7th Cir. 2001).

105. *Swofford*, 671 F. Supp. 2d at 1280; *Goodman*, 632 F. Supp. 2d at 505; *Kvitka*, 2009 WL 385582; *Arteria*, 2008 WL 4513696, at *5; *Wells*, 2008 WL 4365972, at *6; *Johnson*, 2008 WL 2142219, at *6; *Nucor*, 251 F.R.D. at 194; *Paris Bus. Prods.*, 2007 WL 3125184, at *2; *World Courier*, 2007 WL 1119196, at *1; *Optowave*, 2006 WL 3231422, at *7; *Napster*, 462 F. Supp. 2d at 1066; *Easton Sports*, 2006 WL 2811261, at *4; *DaimlerChrysler Motors*, 2005 WL 3502172, at *1; *Mosaid Techs.*, 348 F. Supp. 2d at 335.

106. *Stevenson*, 354 F.3d at 745; *Lewis*, 261 F.R.D. at 518–19; *Brody II*, 657 F. Supp. 2d at 1302; *Usenet.com*, 633 F. Supp. 2d at 138; *Plunk*, 2009 WL 1444436, at *9; *TeleQuest Int'l*, 2009 WL 690996, at *2; *Smith*, 2009 WL 482603, at *3; *Am. Family Mut.*, 2009 WL 982788, at *4 n.6; *Dowling v. United States*, No. 2000-CV-0049, 2008 WL 4534174, at *1 (D.V.I. Oct. 6, 2008); *Metrokane*, 2008 WL 4185865, at *3; *Nursing Home Pension Fund*, 254 F.R.D. at 563; *Keithley*,

was cited in three cases by itself¹⁰⁷ and in fourteen other cases with multiple citations to authority.¹⁰⁸ Rule 26 was cited in four cases with other sanctioning authority.¹⁰⁹

C. Monetary Awards

We identified seventy-seven e-discovery sanction cases providing for specific monetary awards, including awards for default judgments, monetary sanctions, and attorneys' fees and costs.¹¹⁰ The awards ranged from \$250.00¹¹¹ to \$8,830,983.69.¹¹² There are five cases with monetary awards over \$5 million,¹¹³ an additional four cases with monetary awards at or above \$1 million,¹¹⁴ and six additional cases

2008 WL 3833384, at *2; *Cyntegra, Inc. v. Idexx Labs., Inc.*, No. CV 06-4170 PSG (CTx), 2007 WL 5193736, at *2 (C.D. Cal. Sept. 21, 2007), *aff'd*, 322 F. App'x 569 (9th Cir. 2009); *Juniper Networks*, 2007 WL 2021776, at *3; *In re NTL*, 244 F.R.D. at 191; *3M Innovative Props.*, 2006 WL 2670038, at *3; *Larson*, 2005 WL 4652509, at *8; *E*Trade*, 230 F.R.D. at 586; *Hous. Rights Ctr.*, 2005 WL 3320739, at *1; *Zubulake V*, 229 F.R.D. at 430.

107. *Lyondell-Citgo*, 2005 WL 1026461, at *3; *Network Computing*, 223 F.R.D. at 399-400; *Danis v. USN Commc'ns, Inc.*, No. 98 C 7482, 2000 WL 1694325, at *30 (N.D. Ill. Oct. 23, 2000).

108. *Stevenson*, 354 F.3d at 750; *Lewis*, 261 F.R.D. at 518-19; *Usenet.com*, 633 F. Supp. 2d at 138; *Smith*, 2009 WL 482603, at *10; *Metrokane*, 2008 WL 4185865, at *3; *Nursing Home Pension Fund*, 254 F.R.D. at 563; *Keithley*, 2008 WL 3833384, at *3; *Cyntegra*, 2007 WL 5193736, at *2; *Juniper Networks*, 2007 WL 2021776, at *2-3; *In re NTL*, 244 F.R.D. at 191; *3M Innovative*, 2006 WL 2670038, at *11; *Larson*, 2005 WL 4652509, at *8; *E*Trade*, 230 F.R.D. at 586; *Zubulake V*, 229 F.R.D. at 430 n.60.

109. *Smith*, 2009 WL 482603, at *10; *Arista Records LLC v. Usenet.com, Inc.*, 608 F. Supp. 2d 409, 432 (S.D.N.Y. 2009); *E*Trade*, 230 F.R.D. at 586; *Zubulake V*, 229 F.R.D. at 433.

110. For e-discovery sanction cases providing for specific monetary awards, see *infra* Appendix D.

111. *Crown Life Ins. Co. v. Craig*, 995 F.2d 1376, 1379 (7th Cir. 1993).

112. *Grange Mut. Cas. Co. v. Mack*, 270 F. App'x 372, 373 (6th Cir. 2008) (per curiam) (awarding \$3,430,983.69 plus attorneys' fees and costs to plaintiff Grange on December 13, 2006, and \$5,400,000.00 to plaintiff Allstate on February 14, 2007, in connection with a default judgment).

113. *S. New Eng. Tel. Co. v. Global NAPs, Inc.*, 251 F.R.D. 82, 96-97 (N.D.N.Y. 2008) (\$5,893,541.86); *Grange Mut.*, 270 F. App'x at 373 (\$8,830,983.69); *Qualcomm Inc. v. Broadcom Corp.*, No. 05cv1958-B (BLM), 2008 WL 66932, at *20 (S.D. Cal. Jan. 7) (\$8,568,633.24), *vacated in part*, 2008 WL 638108 (S.D. Cal. Mar. 5, 2008); *Wachtel v. Health Net, Inc.*, Civ. No. 01-4183, 2007 WL 1791553, at *5 (D.N.J. June 19, 2007) (\$6,723,883.22); *Pioneer Hi-Bred Int'l, Inc. v. Monsanto Co.*, 4:97CV01609 ERW, 2001 WL 170410, at *22 (E.D. Mo. Jan. 2) (\$8,211,287.50), *amended by* No. 4:97CV1609ERW, 2001 WL 34127923 (E.D. Mo. Feb. 20, 2001).

114. *Kipperman v. Onex Corp.*, 260 F.R.D. 682, 700 (N.D. Ga. 2009) (\$1,022,700); *z4 Techs., Inc. v. Microsoft Corp.*, No. 6:06-CV-142, 2006 WL 2401099, at *25 (E.D. Tex. Aug. 18, 2006) (\$2.3 million); *United States v. Philip Morris USA Inc.*, 327 F. Supp. 2d 21, 26 (D.D.C. 2004) (\$2,755,027.48); *Hawaiian Airlines, Inc. v. Mesa Air Grp. (In re Hawaiian Airlines, Inc.)*, Bankr. No. 03-00817, Adv. No. 06-90026, 2008 WL 185649 (Bankr. D. Haw. Jan. 22, 2008) (\$3,929,532.21).

with monetary awards over \$250,000.¹¹⁵ In total, we identified twenty-seven cases with monetary awards exceeding \$100,000.¹¹⁶

V. COUNSEL SANCTIONS ARE INCREASING

Sanctioning counsel for e-discovery violations is an extraordinary remedy. “A mild presumption exists that clients are in the best position to control their counsel and, absent egregious counsel conduct, should bear the discovery sanctions.”¹¹⁷ Out of 401 e-discovery sanction cases,¹¹⁸ we identified only thirty instances of counsel being sanctioned, with sanctions specifically awarded in twenty-five cases¹¹⁹ and indicated but deferred in five cases.¹²⁰ We also

115. *Gutman v. Klein*, No. 03 Civ. 1570BMC, 2009 WL 3296072, at *9 (E.D.N.Y. Oct. 13, 2009) (\$287,730.16); *Keithley v. Home Store.com, Inc.*, No. C-03-04447 SI (EDL), 2008 WL 3833384, at *19 (N.D. Cal. Aug. 12, 2008) (\$257,528.50); *CSI Inv. Partners II, L.P. v. Cendant Corp.*, 507 F. Supp. 2d 384, 438 (S.D.N.Y. 2007) (\$720,000), *aff'd*, 328 F. App'x 56 (2d Cir. 2009); *In re Sept. 11th Liab. Ins. Coverage Cases*, 243 F.R.D. 114, 132 (S.D.N.Y. 2007) (\$500,000); *Kamatani v. BenQ Corp.*, Civil Action No. Civ.A. 2:03-CV-437, 2005 WL 2455825, at *15 (E.D. Tex. Oct. 6, 2005) (\$500,000); *Mosaid Techs. Inc. v. Samsung Elecs. Co., Ltd.*, 348 F. Supp. 2d 332, 334 (D.N.J. 2004) (\$566,839.97).

116. For cases with monetary awards exceeding \$100,000, see *infra* Appendix D.

117. Thomas Y. Allman, *Conducting E-discovery After the Amendments: The Second Wave*, 10 SEDONA CONF. J. 215, 218 (2009).

118. It is important to note that cases today involve discovery of both ESI and paper documents and that fourteen of the thirty cases involving counsel misconduct related to paper documents as well as ESI.

119. *Edelen v. Campbell Soup Co.*, Civil Action No. 1:08-cv-00299-JOF-LTW, 2009 WL 4798117, at *3 (N.D. Ga. Dec. 8, 2009); *Travel Sentry, Inc. v. Tropp*, 669 F. Supp. 2d 279, 286–87 (E.D.N.Y. 2009); *Swofford v. Eslinger*, 671 F. Supp. 2d 1274, 1288–89 (M.D. Fla. 2009); *Richard Green (Fine Paintings) v. McClendon*, 262 F.R.D. 284, 291 (S.D.N.Y. 2009); *Bray & Gillespie Mgmt. LLC v. Lexington Ins. Co. (Bray & Gillespie II)*, 259 F.R.D. 591, 617 (M.D. Fla.), *rejected in part* by No. 6:07-cv-0222-Orl-35KRS, 2009 WL 5606058 (M.D. Fla., Nov. 11, 2009), *and adopted in part* by No. 6:07-cv-0222-Orl-35KRS, 2010 WL 55595 (M.D. Fla. Jan. 5, 2010); *1100 W., LLC v. Red Spot Paint & Varnish Co.*, No. 1:05-cv-1670-LJM-JMS, 2009 WL 1605118, at *35 (S.D. Ind. June 5, 2009); *Ajaxo Inc. v. Bank of Am. Tech. & Operations, Inc.*, No. CIV-S-07-0945 GEB GGH, 2008 WL 5101451, at *3 (E.D. Cal. Dec. 2, 2008); *R & R Sails Inc. v. Ins. Co. of Pa.*, 251 F.R.D. 520, 528 (S.D. Cal. 2008); *Sterle v. Elizabeth Arden, Inc.*, No. 3:06 CV 01584(DJS), 2008 WL 961216, at *14 (D. Conn. Apr. 9, 2008); *Qualcomm Inc. v. Broadcom Corp.*, No. 05cv1958-B (BLM), 2008 WL 66932, at *1 (S.D. Cal. Jan. 7), *vacated in part*, 2008 WL 638108 (S.D. Cal. Mar. 5, 2008); *Auto. Inspection Servs., Inc. v. Flint Auto Auction, Inc.*, No. 06-15100, 2007 WL 3333016, at *8 (E.D. Mich. Nov. 9, 2007); *Bd. of Regents v. BASF Corp.*, No. 4:04CV3356, 2007 WL 3342423, at *7 (D. Neb. Nov. 5, 2007); *Digene Corp. v. Third Wave Techs., Inc.*, No. 07-C-22-C, 2007 WL 4939048, at *3 (W.D. Wis. Oct. 24, 2007); *In re Sept. 11th Liab. Ins.*, 243 F.R.D. at 132; *NSB U.S. Sales, Inc. v. Brill*, No. 04 Civ. 9240(RCC), 2007 WL 258181, at *3 (S.D.N.Y. Jan. 26, 2007); *Phx. Four, Inc. v. Strategic Res. Corp.*, No. 05 Civ. 4837(HB), 2006 WL 1409413, at *9 (S.D.N.Y. May 23, 2006); *Rousseau v. Echosphere Corp.*, No. Civ. A. 03-1230, 2005 WL 2176839, at *11 (W.D. Pa. Aug. 30, 2005); *Brick v. HSBC Bank USA*, No. 04-CV-0129E(F), 2004 WL 1811430, at *6 (W.D.N.Y. Aug. 11, 2004); *Metro. Opera*

identified seven cases in which sanctions were considered but not awarded.¹²¹ Consistent with the overall increase in sanction cases, Figure 3 demonstrates that counsel sanctions for e-discovery have steadily increased since 2004.

Figure 3. Annual Number of Counsel E-Discovery Sanctions

Year	Cases
1987	1
1989	1
2000	1
2001	1
2002	0
2003	1
2004	2
2005	2
2006	4
2007	5
2008	5
2009	7

Ass'n v. Local 100, Hotel Emps. & Rest. Emps. Int'l Union, 212 F.R.D. 178, 231 (S.D.N.Y. 2003), *adhered to on reconsideration* by No. 00 Civ. 3613(LAP), 2004 WL 1943099 (S.D.N.Y. Aug. 27, 2004); Sheppard v. River Valley Fitness One, L.P., 203 F.R.D. 56, 62 (D.N.H. 2001), *adopted in part and rejected in part* by No. Civ. 00-111-M, 2004 WL 102493 (D.N.H. Jan. 22, 2004), *aff'd in part and vacated in part*, 428 F.3d 1 (1st Cir. 2005); Poole *ex rel.* Elliott v. Textron, Inc., 192 F.R.D. 494, 511 (D. Md. 2000); Mktg. Specialists, Inc. v. Bruni, 129 F.R.D. 35, 55 (W.D.N.Y. 1989), *aff'd*, 923 F.2d 843 (2d Cir. 1990); Nat'l Ass'n of Radiation Survivors v. Turnage, 115 F.R.D. 543, 558 (N.D. Cal. 1987); Oscher v. Solomon Tropp Law Grp. (*In re* Atl. Int'l Mortg. Co.), 352 B.R. 503, 510-11 (Bankr. M.D. Fla. 2006); Cohen Steel Supply, Inc. v. Fagnant (*In re* Fagnant), Nos. 03-10496-JMD, 03-1348-JMD, 2004 WL 2944126, at *4 (Bankr. D.N.H. Dec. 13, 2004).

120. *Pharmacy*, 248 F.R.D. at 718-19; *Mancia v. Mayflower Textile Servs. Co.*, Civil Action No. CCB-08-273, 2009 WL 2252151, at *3-4 (D. Md. July 28, 2009); *Exact Software N. Am., Inc. v. Infocon, Inc.*, 479 F. Supp. 2d 702, 718-19 (N.D. Ohio 2006); *Wachtel v. Health Net, Inc.*, 239 F.R.D. 81, 113-15 (D.N.J. 2006); *Tantivy Commc'ns., Inc. v. Lucent Techs. Inc.*, No. Civ.A.2:04CV79 (TJW), 2005 WL 2860976, at *3-4 (E.D. Tex. Nov. 1, 2005).

121. *Grider*, 580 F.3d at 140, 144; *Ibarra*, 338 F. App'x at 470; *Pinstripe, Inc. v. Manpower, Inc.*, No. 07-CV-620-GKF-PJC, 2009 WL 2252131, at *2-3 (N.D. Okla. July 29, 2009); *In re Rosenthal*, Civil Action No. H-04-186, 2008 WL 983702, at *12 (S.D. Tex. Mar. 28, 2008); *Finley v. Hartford Life & Accident Ins. Co.*, 249 F.R.D. 329, 332 (N.D. Cal. 2008); *Quinby*, 2005 WL 3453908, at *9-10; *Cuomo*, 1998 WL 395320, at *2-3.

Like the case law involving e-discovery sanctions generally, case law involving counsel e-discovery sanctions is predominantly being developed at the trial court level by magistrate judges, bankruptcy judges, and district court judges. We identified only two opinions by a federal appellate court addressing potential e-discovery sanctions against counsel. In both instances, the court vacated sanctions against counsel.¹²²

Courts have cited six general sources of authority for e-discovery sanctions against counsel: Rule 26, Rule 37, Section 1927, the inherent power of the court, local court rules, and state bar regulations governing attorney conduct. Some written rulings are less than precise regarding the specific basis for their decisions, often discussing multiple sources of authority and the Federal Rules of Civil Procedure generally rather than citing to specific subsections. Cited in twenty of the thirty cases, Rule 37 is the most frequently used authority for imposing sanctions on counsel for e-discovery violations.¹²³ The inherent power of the court was used in eleven¹²⁴ of the thirty cases and was relied upon as the sole source of authority in only two of those cases.¹²⁵

122. See *Grider*, 580 F.3d at 140, 144 (vacating sanctions against counsel under Rules 26 and 37 because the trial court did not undertake a substantial justification analysis, and under 28 USC § 1927 for lack of factual specificity as to the conduct of each defendant); *Ibarra*, 338 F. App'x at 470–71 (vacating sanctions against in-house counsel for a county attorney general's office because there was no finding that counsel acted in bad faith, provided a false certification, or committed fraud).

123. Several circuit courts have held that Rule 37(c) does not authorize counsel sanctions. See *Grider*, 580 F.3d at 141 (“We find the reasoning of the Second and Seventh Circuits persuasive and hold that Rule 37(c)(1) does not permit sanctions against counsel.”); *Maynard v. Nygren*, 332 F.3d 462, 470 (7th Cir. 2003); *Apex Oil Co. v. Belcher Co.*, 855 F.2d 1009, 1014 (2d Cir. 1988). *But see Travel Sentry*, 669 F. Supp. 2d at 284; *Richard Green*, 262 F.R.D. at 288; *Bray & Gillespie II*, 259 F.R.D. at 608; *Red Spot*, 2009 WL 1605118, at *26–27; *Kipperman v. Onex Corp.*, 260 F.R.D. 682, 699 (N.D. Ga. 2009); *Ajaxo*, 2008 WL 5101451, at *2; *Pharmacy Records v. Nassar (Pharmacy Records I)*, 248 F.R.D. 507, 529 (E.D. Mich. 2008), *aff'd*, 379 F. App'x 522 (6th Cir. 2010); *R & R Sails*, 251 F.R.D. at 526; *Sterle*, 2008 WL 961216, at *7; *Qualcomm*, 2008 WL 66932, at *13 n.9; *Digene*, 2007 WL 4939048, at *1; *In re Sept. 11th Liab. Ins.*, 243 F.R.D. at 131–32; *Wachtel v. Health Net, Inc.*, 239 F.R.D. 81, 110 (D.N.J. 2006); *NSB*, 2007 WL 258181, at *2; *Phx. Four*, 2006 WL 1409413, at *7; *Metro. Opera*, 212 F.R.D. at 224; *Poole*, 192 F.R.D. at 506; *Mktg. Specialists*, 129 F.R.D. at 53; *Atl. Int'l*, 352 B.R. at 510; *Fagnant*, 2004 WL 2944126, at *1.

124. *Travel Sentry*, 669 F. Supp. 2d at 284; *Swofford*, 671 F. Supp. 2d at 1287; *Richard Green*, 262 F.R.D. at 288; *Red Spot*, 2009 WL 1605118, at *27–28; *Pharmacy Records I*, 248 F.R.D. at 529; *Qualcomm*, 2008 WL 66932, at *13 n.9; *Auto. Inspection Servs.*, 2007 WL 3333016, at *3; *Wachtel*, 239 F.R.D. at 100; *Brick*, 2004 WL 1811430, at *3; *Metro. Opera*, 212 F.R.D. at 231; *Nat'l Ass'n of Radiation Survivors*, 115 F.R.D. at 554.

125. *Auto. Inspection Servs.*, 2007 WL 3333016, at *3; *Brick*, 2004 WL 1811430, at *3.

Courts rarely sanction counsel for e-discovery violations without also sanctioning the client.¹²⁶ In all three cases in which courts have sanctioned in-house counsel for e-discovery violations, the client was also sanctioned.¹²⁷ Additionally, counsel sanctions usually result from a pattern of misconduct, not an isolated incident. In only four of the thirty cases involving outside counsel sanctions were outside counsel sanctioned as the result of a single instance of misconduct.¹²⁸

The cases identified various levels of misconduct as the basis for counsel sanctions. Four cases involved negligence, seven cases involved gross negligence, nine cases involved reckless disregard, and ten cases involved intentional conduct or bad faith.

Negligence is a failure to conform to the standards of acceptable conduct “to participate meaningfully and fairly in the discovery phase.”¹²⁹ In all four cases in which the court sanctioned counsel for negligent conduct, counsel was in possession of client materials but failed to produce them in a timely fashion.¹³⁰

126. In only four of thirty cases were outside counsel sanctioned without the client also being sanctioned. See *Auto. Inspection Servs.*, 2007 WL 3333016, at *7 (“[T]he Court will not attribute [counsel’s] conduct to his client and deprive it a chance to present its case on the merits.”); *Rousseau v. Echosphere Corp.*, No. Civ.A.03-1230, 2005 WL 2176839, at *1 (W.D. Pa. Aug. 30, 2005) (sanctioning counsel alone because the client’s case had already been dismissed); *Brick*, 2004 WL 1811430, at *3 n.29 (sanctioning counsel alone because his “disregard of discovery obligations . . . could not have been performed on behalf of his client”); *Fagnant*, 2004 WL 2944126, at *2, *4 (sanctioning counsel alone for carelessly or negligently delaying document delivery, despite the client’s good faith efforts).

127. *Swofford*, 671 F. Supp. 2d at 1288–89; *Qualcomm*, 2008 WL 66932, at *1; *Nat’l Ass’n of Radiation Survivors*, 115 F.R.D. at 558; see also *Bray & Gillespie II*, 259 F.R.D. at 588, 590 (sanctioning the client and outside counsel, and reminding in-house counsel not to rely blindly on outside counsel); *Poole*, 192 F.R.D. at 611 (directing sanctions at the client and outside counsel, but also holding that sanctions are appropriate against in-house counsel).

128. See *Edelen v. Campbell Soup Co.*, Civil Action No. 1:08-cv-00299-JOF-LTW, 2009 WL 4798117, at *2–3 (N.D. Ga. Dec. 8, 2009) (sanctioning counsel for the failure to comply with a court order to narrow overly broad requests that sought the complete contents of employee laptops); *Ajaxo*, 2008 WL 5101451, at *1–2 (sanctioning counsel for noncompliance with a court order requiring production of documents in a searchable format); *R & R Sails*, 251 F.R.D. at 526 (sanctioning counsel for producing only eleven of the seventeen pages in its possession prior to the relevant deposition); *Fagnant*, 2004 WL 2944126, at *1–2 (sanctioning counsel for not producing computer database printouts in its possession until the eve of trial).

129. *Pension Comm. of Univ. of Montreal Pension Plan v. Banc of Am. Sec., LLC*, 685 F. Supp. 2d 456, 464 (S.D.N.Y. 2010).

130. See *R & R Sails*, 251 F.R.D. at 526 (sanctioning counsel for not producing the entire electronic claim log until the next month); *Digene Corp. v. Third Wave Techs., Inc.*, No. 07-C-22-C, 2007 WL 4939048, at *1–2 (W.D. Wis. Oct. 24, 2007) (sanctioning counsel for delaying notebook production for months because counsel mistakenly believed the notebooks had already been sent electronically); *Sheppard v. River Valley Fitness One, L.P.*, 203 F.R.D. 56, 60 (D.N.H. 2001) (sanctioning counsel for the failure to timely comply with a discovery order),

Gross negligence is “a failure to exercise even that care which a careless person would use.”¹³¹ Three different forms of sanctionable conduct by counsel have been deemed grossly negligent. First, the failure to advise the client to issue litigation holds or to otherwise take steps to preserve potentially relevant information has been found to be gross negligence.¹³² The court in *Richard Green (Fine Paintings) v. McClendon*¹³³ noted that “the failure to implement a litigation hold is, by itself, considered grossly negligent behavior.”¹³⁴ Second, the failure to supervise a client search for responsive information by accepting client representations as to the adequacy of the client’s search, in light of clear information to the contrary, has been held to constitute gross negligence.¹³⁵ Finally, the failure to produce a critical document in the possession of counsel for several years has also been held to constitute grossly negligent conduct.¹³⁶

Six of the nine cases in which the court found counsel’s conduct constituted reckless disregard involved a failure to comply with court-issued discovery orders without reasonable justification.¹³⁷ In the

adopted in part and rejected in part by No. Civ. 00-111-M, 2004 WL 102493 (D.N.H. Jan. 22, 2004), *aff’d in part and vacated in part*, 428 F.3d 1 (1st Cir. 2005); *Fagnant*, 2004 WL 2944126, at *1–2 (sanctioning counsel for not producing a computerized general ledger until the eve of trial, nearly eight months after his client gave it to him).

131. *Pension Comm.*, 685 F. Supp. 2d at 464.

132. *See* *Richard Green (Fine Paintings) v. McClendon*, 262 F.R.D. 284, 290 (S.D.N.Y. 2009) (holding that the failure to institute a litigation hold is grossly negligent and sanctioning the client in part for this failure); *Bd. of Regents v. BASF Corp.*, No. 4:04CV3356, 2007 WL 3342423, at *5 (D. Neb. Nov. 5, 2007) (sanctioning counsel for not directing the client to preserve potentially relevant ESI during computer system migration and for not specifically directing the client to search for electronic documents); *Mktg. Specialists, Inc. v. Bruni*, 129 F.R.D. 35, 54 (W.D.N.Y. 1989), *aff’d*, 923 F.2d 843 (2d Cir. 1990) (sanctioning counsel for “wilfully fail[ing] to attend to the work necessary to ascertain the existence of other records of the parties’ relationship and to make a proper disclosure”).

133. *Richard Green (Fine Paintings) v. McClendon*, 262 F.R.D. 284 (S.D.N.Y. 2009).

134. *Id.* at 290–91.

135. *See* *Phx. Four, Inc. v. Strategic Res. Corp.*, No. 05 Civ. 4837(HB), 2006 WL 1409413, at *6 (S.D.N.Y. May 23, 2006) (finding counsel grossly negligent for “simply accept[ing]” the client’s representations about its lack of computers to search); *Poole ex rel. Elliott v. Textron*, 192 F.R.D. 494, 502 (D. Md. 2000) (sanctioning counsel for producing only one page in response to initial requests, 470 pages after receiving a motion to compel, but over 2,900 pages and 20 videotapes after a motion for sanctions was filed); *Nat’l Ass’n of Radiation Survivors v. Turnage*, 115 F.R.D. 543, 556 (N.D. Cal. 1987) (sanctioning in-house counsel for failing to distribute discovery requests to all the employees and agents who potentially possessed responsive information or for failing to account for its collection and subsequent production).

136. *See In re Sept. 11th Liab. Ins. Coverage Cases*, 243 F.R.D. 114, 130 (S.D.N.Y. 2007) (finding counsel “negligen[t] or worse” for the failure to produce a highly relevant document for nearly two years despite being alerted to its possible existence by opposing counsel).

137. *See* *Edelen v. Campbell Soup Co.*, Civil Action No. 1:08-cv-C0299-JOF-LTW, 2009 WL

other three cases, courts found repeated counsel misrepresentations about the adequacy of the client's search and production, in light of overwhelming evidence to the contrary, to constitute recklessness.¹³⁸

In the cases we analyzed, sanctions for intentional or bad faith conduct typically resulted from multiple egregious failures to oversee the client's preservation, search, and production efforts, followed by misrepresentations to the court over an extended period of time.¹³⁹

4798117, at *3 (N.D. Ga. Dec. 8, 2009) (affirming sanctions against counsel for its failure to comply with a court order to limit discovery); *Ajaxo Inc. v. Bank of Am. Tech. & Operations, Inc.*, No. CIV-S-07-0945 GEB GGH, 2008 WL 5101451, at *1-2 (E.D. Cal. Dec. 2, 2008) (sanctioning counsel for unjustified disregard of a court order in its failure to produce documents in the court-ordered searchable format); *Sterle v. Elizabeth Arden, Inc.*, No. 3:06 CV 01584(DJS), 2008 WL 961216, at *13 (D. Conn. Apr. 9, 2008) (sanctioning counsel for improper obstruction during a court-ordered forensic inspection); *Wachtel v. Health Net*, 239 F.R.D. 81, 101 (D.N.J. 2006) (sanctioning counsel for improper conduct and flagrant disregard of court orders in its failure to comply with a court order to supplement production); *NSB U.S. Sales, Inc. v. Brill*, No. 04 Civ. 9240(RCC), 2007 WL 258181, at *3 (S.D.N.Y. Jan. 26, 2007) (sanctioning counsel for its disregard of and failure to comply with three court orders compelling discovery); *Oscher v. Solomon Tropp Law Grp. (In re Atl. Int'l Mortg. Co.)*, 352 B.R. 503, 509 (Bankr. M.D. Fla. 2006) (sanctioning counsel for ignoring discovery requests and filing meritless appeals of nonappealable discovery orders).

138. See *Tantivy Commc'ns, Inc. v. Lucent Techs. Inc.*, No. Civ.A.2:04CV79 (TJW), 2005 WL 2860976, at *2 (E.D. Tex. Nov. 1, 2005) (finding sanctionable conduct when counsel allowed relevant ESI to be destroyed through normal destruction practices and denied the existence of, and failed to produce until "the eleventh hour," highly relevant documents despite specific references to such documents by opposing counsel); see also *Bray & Gillespie Mgmt. LLC v. Lexington Ins. Co. (Bray & Gillespie I)*, 259 F.R.D. 568, 587 (M.D. Fla.) ("Such deliberate or reckless disregard of the truth can never provide substantial justification under Rule 37."), *aff'd in part*, No. 6:07-cv-0222, 2009 WL 5606058 (M.D. Fla. Nov. 16, 2009); *Mancia v. Mayflower Textile Servs. Co.*, No. CCB-08-273, 2009 WL 2252151, at *4 (D. Md. July 28, 2009) (ordering a motion to compel, a sanctions consideration hearing, and an award of costs for apparent discovery violations and deficiencies).

139. See *Swofford v. Eslinger*, 671 F. Supp. 2d 1274, 1285 (M.D. Fla. 2009) (sanctioning counsel for failure to issue a litigation hold despite receiving two notices requesting preservation); *1100 W., LLC v. Red Spot Paint & Varnish Co.*, No. 1:05-cv-1670-LJM-JMS, 2009 WL 1605118, at *28-35 (S.D. Ind. June 5, 2009) (sanctioning counsel for the failure to supervise the client's search, failure to produce responsive documents, and misrepresentations about client information); *Pharmacy Records v. Nassar (Pharmacy Records II)*, 572 F. Supp. 2d 869, 873 (E.D. Mich. 2008) ("Although some of the events in this litigation might be excused as resulting from mere negligence when viewed in isolation, considering them in the aggregate invariably leads to the conclusion that the plaintiffs and their attorney have conducted a campaign of fraud."); *Qualcomm Inc. v. Broadcom Corp.*, No. 05cv1958-B (BLM), 2008 WL 66932, at *12-20 (S.D. Cal. Jan. 7) (sanctioning counsel for the failure to instruct the client on searches, failure to produce, and misrepresentations about the existence of 46,000 potentially responsive emails), *vacated in part*, 2008 WL 638108 (S.D. Cal. Mar. 5, 2008); *Brick v. HSBC Bank USA*, No. 04-CV-0129E(F), 2004 WL 1811430, at *1-4 (W.D.N.Y. Aug. 11, 2004) (sanctioning counsel for the failure to issue a litigation hold, failure to supervise the search by the client's employee, misrepresentations as to production completion, failure to notify the court of document destruction, improperly withholding documents for privilege, and failure to

Additionally, the discovery at issue was usually central to the litigation and, in many instances, the subject of specific court orders compelling production.¹⁴⁰

Sanctions for counsel can be based on the counsel's personal execution of discovery tasks or on the counsel's role in coordinating and overseeing the client's discovery.¹⁴¹ Rule 26(g) imposes on counsel an affirmative duty to engage in pretrial discovery responsibly.¹⁴² As noted in *Metropolitan Opera*, although "counsel need not supervise every step of the document production process and may rely on their clients in some respects, the rule expressly requires counsel's responses to be made upon reasonable inquiry."¹⁴³

Counsel sanctions for failure to execute discovery obligations include situations in which the client has met its underlying discovery obligations to collect and provide requested discovery materials to counsel, but counsel has failed to produce the requested discovery or communicate accurate information to the court and opposing counsel in a timely manner. Counsel's failure to competently execute

produce client files in possession of counsel); *Metro. Opera Ass'n, Inc. v. Local 100, Hotel Emps. & Rest. Emps. Int'l Union*, 212 F.R.D. 178, 184–214 (S.D.N.Y. 2003) (sanctioning counsel for the failure to issue a litigation hold, failure to supervise a search for responsive documents, misrepresentations as to production completion, and unilateral failure to produce a category of responsive documents), *adhered to on reconsideration by* No. 00 Civ. 3613(LAP), 2004 WL 1943099 (S.D.N.Y. Aug. 27, 2004).

140. *Auto. Inspection Servs., Inc. v. Flint Auto Auction, Inc.*, No. 06-15100, 2007 WL 3333016, at *6 (E.D. Mich. Nov. 9, 2007) (finding that counsel's "secret access to these computers may have irrevocably tainted key pieces of evidence"); *Exact Software N. Am., Inc. v. Infocon, Inc.*, 479 F. Supp. 2d 702, 719 (N.D. Ohio 2006) ("The information at issue is not ancillary to its case; most of it goes to the heart . . ."); *see also* *Travel Sentry, Inc. v. Tropp*, 669 F. Supp. 2d 279, 285 (E.D.N.Y. 2009) (listing lower court orders that focus on discovery compliance); *Rousseau v. Echosphere Corp.*, No. Civ.A. 03-1230, 2005 WL 2176839, at *8 (W.D. Pa. Aug. 30, 2005) (holding that the belated production of material evidence ultimately led to the dismissal of the case).

141. *See* *Zubulake v. UBS Warburg LLC (Zubulake V)*, 229 F.R.D. 422, 435 (S.D.N.Y. 2004) ("[C]ounsel is responsible for coordinating her client's discovery efforts . . . to properly oversee . . . its duty to locate relevant information and its duty to preserve and timely produce that information."); *see also id.* at 432 ("A party's discovery obligations do not end with the implementation of a 'litigation hold'—to the contrary, that's only the beginning. Counsel must oversee compliance with the litigation hold, monitoring the party's efforts to retain and produce the relevant documents. Proper communication between a party and her lawyer will ensure (1) that all relevant information (or at least all sources of relevant information) is discovered, (2) that relevant information is retained on a continuing basis; and (3) that relevant non-privileged material is produced to the opposing party.").

142. FED. R. CIV. P. 26(g).

143. *Metro. Opera*, 212 F.R.D. at 222.

discovery obligations was the basis for sanctions in nine of the thirty counsel sanction cases.¹⁴⁴

Counsel sanctions related to lack of coordination and oversight involve client failures to preserve, search, or produce, and corresponding failures by counsel to advise their clients to adequately preserve, search, or produce. The number of cases in which failure to coordinate and oversee client conduct was at least one basis for counsel sanctions has increased from a total of four cases through 2003¹⁴⁵ to a total of seventeen cases from 2004 through 2009.¹⁴⁶ An

144. See *Edelen v. Campbell Soup Co.*, Civil Action No. 1:08-cv-C0299-JOF-LTW, 2009 WL 4798117, at *3 (N.D. Ga. Dec. 8, 2009) (sanctioning counsel for failure to comply with a court order to limit discovery); *Travel Sentry*, 669 F. Supp. 2d at 286–87 (sanctioning counsel for its “conscious concealment of the facts and . . . documents”); *Ajaxo Inc. v. Bank of Am. Tech. & Operations, Inc.*, No. CIV-S-07-0945 GEB GGH, 2008 WL 5101451, at *2 (E.D. Cal. Dec. 2, 2008) (sanctioning counsel for its unjustified disregard of a court order); *Sterle v. Elizabeth Arden, Inc.*, No. 3:06 CV 01584(DJS), 2008 WL 961216, at *13 (D. Conn. Apr. 9, 2008) (sanctioning counsel for its unreasonable conduct throughout discovery); *Auto. Inspection Servs.*, 2007 WL 3333016, at *8 (sanctioning counsel for violating Rule 45 during discovery); *Digene Corp. v. Third Wave Techs., Inc.*, No. 07-CC-2-C, 2007 WL 4939048, at *1–2 (W.D. Wis. Oct. 24, 2007) (sanctioning counsel for a discovery misunderstanding that resulted in a delay); *Rousseau*, 2005 WL 2176839, at *9 (sanctioning counsel for delaying discovery after finding a document that undermined his client’s case); *Sheppard v. River Valley Fitness One, L.P.*, 203 F.R.D. 56, 62 (D.N.H. 2001) (sanctioning counsel for obstructing discovery, misleading the other party, and concealing his conduct), *adopted in part and rejected in part* by No. Civ. 00-111-M, 2004 WL 102493 (D.N.H. Jan. 22, 2004), *aff’d in part and vacated in part*, 428 F.3d 1 (1st Cir. 2005); *Cohen Steel Supply, Inc. v. Fagnant (In re Fagnant)*, Nos. 03-10496-JMD, 03-1348-JMD, 2004 WL 2944126, at *2 (Bankr. D.N.H. Dec. 13, 2004) (sanctioning counsel for the failure to produce a document until the eve of trial).

145. *Metro. Opera*, 212 F.R.D. at 223–24; *Poole ex rel. Elliott v. Textron, Inc.*, 192 F.R.D. 494, 503 (D. Md. 2000); *Nat’l Mktg. Specialists, Inc. v. Bruni*, 129 F.R.D. 35, 54 (W.D.N.Y. 1989), *aff’d*, 923 F.2d 843 (2d Cir. 1990); *Nat’l Ass’n of Radiation Survivors v. Turnage*, 115 F.R.D. 543, 556 (N.D. Cal. 1987).

146. *Swofford v. Eslinger*, 671 F. Supp. 2d 1274, 1281 (M.D. Fla. 2009); *Richard Green (Fine Paintings) v. McClendon*, 262 F.R.D. 284, 290 (S.D.N.Y. 2009); *Bray & Gillespie Mgmt. LLC v. Lexington Ins. Co. (Bray & Gillespie II)*, 259 F.R.D. 591, 611 (M.D. Fla.), *rejected in part* by No. 6:07-cv-0222-Orl-35KRS, 2009 WL 5606058 (M.D. Fla., Nov. 11, 2009), *and adopted in part* by No. 6:07-cv-0222-Orl-35KRS, 2010 WL 55595 (M.D. Fla. Jan. 5, 2010); *Mancia v. Mayflower Textile Servs. Co.*, No. CCB-08-273, 2009 WL 2252151, at *3 (D. Md. July 28, 2009); *1100 W., LLC v. Red Spot Paint & Varnish Co.*, No. 1:05-cv-1670-LJM-JMS, 2009 WL 1605118, at *35 (S.D. Ind. June 5, 2009); *Pharmacy Records v. Nassar (Pharmacy Records II)*, 572 F. Supp. 2d 869, 881 (E.D. Mich. 2008); *R & R Sails Inc. v. Ins. Co. of Pa.*, 251 F.R.D. 520, 525 (S.D. Cal. 2008); *Qualcomm Inc. v. Broadcom Corp.*, No. 05cv1958-B (BLM), 2008 WL 66932, at *12–20 (S.D. Cal. Jan. 7), *vacated in part*, 2008 WL 638108 (S.D. Cal. Mar. 5, 2008); *Bd. of Regents v. BASF Corp.*, No. 4:04CV3356, 2007 WL 3342423, at *5 (D. Neb. Nov. 5, 2007); *Wachtel v. Health Net, Inc.*, 239 F.R.D. 81, 92–97 (D.N.J. 2006); *In re Sept. 11th Liab. Ins. Coverage Cases*, 243 F.R.D. 114, 130 (S.D.N.Y. 2007); *NSB U.S. Sales, Inc. v. Brill*, No. 04 Civ. 9240(RCC), 2007 WL 258181, at *3 (S.D.N.Y. Jan. 26, 2007); *Exact Software N. Am., Inc. v. Infocon Inc.*, 479 F. Supp. 2d 702, 703 (N.D. Ohio 2006); *Phx. Four, Inc. v. Strategic Res. Corp.*, No. 05 Civ.

emerging issue in these types of counsel-sanction cases is the nature and extent of counsel's reasonable reliance on client representations regarding discovery compliance.¹⁴⁷

The predominant sanction against counsel was an award of attorneys' fees and costs, ranging from \$500 to \$500,000.¹⁴⁸ In seven cases, the monetary sanction was allocated jointly and severally between counsel and the client.¹⁴⁹ Additionally, four cases awarded nonmonetary sanctions against counsel, imposing special discovery compliance requirements.¹⁵⁰

4837(HB), 2006 WL 1409413, at *6 (S.D.N.Y. May 23, 2006); *Tantivy Commc'ns, Inc. v. Lucent Techs. Inc.*, No. Civ.A.2:04CV79 (TJW), 2005 WL 2860976, at *4 (E.D. Tex. Nov. 1, 2005); *Brick v. HSBC Bank USA*, No. 04-CV-0129E(F), 2004 WL 1811430, at *4 (W.D.N.Y. Aug. 11, 2004); *Oscher v. Solomon Tropp Law Grp. (In re Atl. Int'l Mortg. Co.)*, 352 B.R. 503, 507-08 (Bankr. M.D. Fla. 2006).

147. See *Red Spot*, 2009 WL 1605118, at *34 (ordering sanctions against counsel and noting that "[b]eing a zealous lawyer does not mean zealously believing your client in light of evidence to the contrary"); *Phx. Four*, 2006 WL 1409413, at *6 (ordering sanctions against counsel because it "simply accepted [the client's] representation" rather than being "diligent . . . as it should have" in ensuring the completeness of the client's discovery efforts); but see *Bray & Gillespie Mgmt. LLC v. Lexington Ins. Co. (Bray & Gillespie III)*, No. 6:07-cv-0222-Orl-35KRS, 2009 WL 5606058, at *3 (M.D. Fla. Nov. 16, 2009) (holding that counsel's reliance on the misrepresentation of the client as to the completeness of production "is not the sort of conduct for which sanctions against counsel may issue"); *Pinstripe Inc. v. Manpower, Inc.*, No. 07-CV-620-GKF-PJC, 2009 WL 2252131, at *2-3 (declining to grant sanctions for counsel who made reasonable inquiry into the client's completeness of production and relied upon false client representation concerning the implementation of a litigation hold); *Finley v. Hartford Life & Accident Ins. Co.*, 249 F.R.D. 329, 332 (N.D. Cal. 2008) (refusing to grant sanctions under Rule 26(g) despite counsel's negligent reliance on the client's defective search because counsel did not act in bad faith); Thomas Y. Allman, *Achieving an Appropriate Balance: The Use of Counsel Sanctions in Connection with the Resolution of E-Discovery Misconduct*, 15 RICH. J.L. & TECH. 9, ¶ 22 (2009), <http://jolt.richmond.edu/v15i3/article9.pdf> ("Some courts, unfortunately, treat outside counsel as virtual guarantors of discovery diligence and see very little room for reliance on client resources.").

148. See *In re Sept. 11th Liab. Ins.*, 243 F.R.D. at 131 (awarding joint and several sanction of \$500,000 for the failure to preserve and produce the requested documents); *Sheppard*, 203 F.R.D. at 60 (awarding \$500 for the failure to timely produce floppy discs).

149. *Bray & Gillespie II*, 259 F.R.D. at 617; *Pharmacy Records II*, 572 F. Supp. 2d at 881; *R & R Sails*, 251 F.R.D. at 528; *Digene*, 2007 WL 4939048, at *3; *In re Sept. 11th Liab. Ins.*, 243 F.R.D. at 133; *Poole*, 192 F.R.D. at 510-11; *Mktg. Specialists*, 129 F.R.D. at 55.

150. See *Qualcomm*, 2008 WL 66932, at *18-19 (directing counsel to participate in the development of a discovery protocol); *Auto. Inspection Servs., Inc. v. Flint Auto Auction, Inc.*, No. 06-15100, 2007 WL 3333016, at *8 (E.D. Mich. Nov. 9, 2007) (directing counsel to submit an affidavit to the court certifying that he had read Rule 45 of the Federal Rules of Civil Procedure); *Bd. of Regents*, 2007 WL 3342423, at *7 (directing counsel to submit an affidavit to the court regarding counsel's discovery compliance efforts); *Nat'l Ass'n of Radiation Survivors*, 115 F.R.D. at 559 (directing counsel to develop and submit a discovery plan to the court).

VI. RULE 37(E)'S SAFE HARBOR PROVIDES LIMITED PROTECTION

Rule 37(e), adopted on December 1, 2006, contains a safe harbor for certain conduct relating to the preservation and production of ESI. The Rule provides: "Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system."¹⁵¹

The drafters intended the rule to provide only "limited protection against sanctions."¹⁵² Its purpose was to protect against sanctions arising solely from the loss of ESI through the routine operation of electronic systems that automatically discard information.¹⁵³ The rule was never intended to provide protection for all manner of missteps in the broad range of e-discovery activities performed by parties and their counsel—such as failure to search and failure to produce on schedule.

Despite its limited scope, the proposed rule generated controversy concerning the appropriate standard of culpability that would support or preclude sanctions.¹⁵⁴ Proposed standards included

151. FED. R. CIV. P. 37(e). When adopted, the safe harbor provision was contained in Rule 37(f). The 2007 edition of the Federal Rules moved the safe harbor provision from Rule 37(f) to Rule 37(e) with no changes to the rule's text. *Compare id.*, with FED. R. CIV. P. 37(f) (2006).

152. ADVISORY COMM. ON THE FEDERAL RULES OF CIVIL PROCEDURE, REPORT OF THE CIVIL RULES ADVISORY COMMITTEE 83 (May 27, 2005), available at <http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/Reports/CV5-2005.pdf>. The Committee noted that the proposed new rule would afford "limited protection against sanctions" for the loss of information as a result of the routine operation of an electronic information system. The Committee recognized (1) that automated features in many electronic systems "automatically create, discard, or update information without specific direction from, or awareness of" system users; (2) that "such automatic features are essential to the operation of electronic information systems"; and (3) that "suspending or interrupting these features can be prohibitively expensive and burdensome." *Id.* The Committee noted that electronic information systems present issues for businesses that are absent from traditional, paper-based systems and that efforts to suspend automatic electronic processes risk disrupting business operations: "[i]t is unrealistic to expect parties to stop such routine operation of their computer systems as soon as they anticipate litigation." *Id.*

153. *Id.* at 83.

154. *See id.* at 83–90 (discussing the proposed rule and the public commentary surrounding it). The first draft of the proposed rule published by the Advisory Committee "barred sanctions only if the party who lost electronically stored information took reasonable steps to preserve the information after it knew or should have known the information was discoverable in the action." *Id.* at 88. The Advisory Committee noted that this proposed version adopted a negligence standard, and the Committee also invited comment on whether the rule should instead set forth a standard of conduct which would bar sanctions unless the party "recklessly or intentionally failed to preserve the information." *Id.*

negligence, recklessness, and intentional conduct. The Advisory Committee ultimately adopted what it deemed to be an “intermediate” culpability standard, providing “protection from sanctions only for the ‘good faith’ routine operation of an electronic information system.”¹⁵⁵

From Rule 37(e)’s promulgation on December 1, 2006, until January 1, 2010, we identified only thirty federal court decisions citing the safe harbor provision. Three of these cases did not relate to discovery of ESI in civil cases, as two involved paper documents¹⁵⁶ and one was a criminal case.¹⁵⁷ Of the remaining twenty-seven cases, we identified, at most, seven and one-half cases that invoked Rule 37(e) to protect a party from sanctions. In five of those cases, the court invoked Rule 37(e) to deny requested sanctions.¹⁵⁸ In two cases, the court mentioned Rule 37(e) and denied sanctions, but it is unclear

155. *Id.* at 84–85.

156. *Mohrmeyer v. Wal-Mart Stores E., L.P.*, No. 09-69-WOB, 2009 WL 4166996, at *3 (E.D. Ky. Nov. 20, 2009) (refusing to award sanctions against the defendant for discarding hard-copy maintenance logs “as a result of its routine, good-faith records management practices long before [it] received any notice of the likelihood of litigation” and finding Rule 37(e) inapplicable because the documents were not ESI, but citing the Rule “[b]y analogy”); *United Med. Supply Co. v. United States*, 77 Fed. Cl. 257, 270 n.24 (2007) (addressing the spoliation of paper government-contract files and citing Rule 37 in a footnote to illustrate the availability of sanctions absent proof of bad faith).

157. *United States v. O’Keefe*, 537 F. Supp. 2d 14, 22 (D.D.C. 2008) (citing Rule 37(e) by analogy in a criminal case).

158. *Sue v. Milyard*, No. 07-cv-07711-REB-MJW, 2009 WL 2424435, at *2 (D. Colo. Aug. 6, 2009) (denying sanctions for the destruction of evidence when video footage stored on the defendant’s hard drive was automatically recorded over within five to seven days due to the normal operating process of the camera’s computer system, which erased the footage before the plaintiff made a request to preserve it); *Se. Mech. Servs., Inc. v. Brody (Brody I)*, No. 8:08-CV-1151-T-30EAJ, 2009 WL 2242395, at *3 (M.D. Fla. July 24, 2009) (holding that no spoliation sanction was warranted because the overwriting of backup tapes involved no bad faith and was part of the company’s routine document-management policy); *Gipetti v. United Parcel Serv., Inc.*, No. CO7-00812 RMW (HRL), 2008 WL 3264483, at *1, *3–4 (N.D. Cal. Aug. 6, 2008) (rejecting a request for spoliation sanctions against a company that discarded tachograph records showing a vehicle’s speed and the length of time it was moving or stationary, because the company’s practice was to preserve the records for only thirty-seven days due to the large volume of data and the company had no notice that the specific records sought should have been preserved); *Escobar v. City of Houston*, No. 04-1945, 2007 WL 2900581, at *18–19 (S.D. Tex. Sept. 29, 2007) (rejecting an adverse-inference instruction when the defendant destroyed documents deemed not responsive to the document requests and the party seeking sanctions failed to show the relevance of the records sought or that destruction was in bad faith); *Columbia Pictures Indus. v. Bunnell*, No. CV 06-1093FMCJXC, 2007 WL 2080419, at *14 (C.D. Cal. May 29, 2007) (holding that a party’s failure to retain website server log data, stored temporarily in RAM, was not sanctionable due to the party’s “good faith belief that preservation of data temporarily stored only in RAM was not legally required”).

whether the court relied on the rule in making its decision.¹⁵⁹ The half case is a decision in which the court held that Rule 37(e)'s safe harbor would protect a party from potential sanctions for some conduct prior to notice of litigation, but that it would not protect the party from potential sanctions for other conduct after notice.¹⁶⁰

Courts have not shown a propensity to give the safe harbor broad and ready application. One court cited the rule at the outset of a case, warning the parties to be cautious in relying on its protection.¹⁶¹ In another case, the court cited the rule but deferred consideration of sanctions.¹⁶² In twelve decisions, the court denied the safe harbor, with many courts finding that the post-notice destruction of evidence was not within the protection of Rule 37(e).¹⁶³ Among

159. *In re Kessler*, No. 05 CV 6056(SJF)(AKT), 2009 WL 2603104, at *3 (E.D.N.Y. Mar. 27, 2009) (appearing to apply Rule 37(e) *sub silentio* to reject an award of attorneys' fees based on the party's failure to preserve video footage which "self-destructed" approximately twenty-seven hours after it was recorded "in accordance with the routine operation of the . . . surveillance system"); *Riverside Healthcare, Inc. v. Sysco Food Servs. of San Antonio, LP* (*In re Riverside Healthcare, Inc.*), 393 B.R. 422, 429 (Bankr. M.D. La. 2008) (refusing to award sanctions when the absence of the requested email did not unfairly prejudice the opposing party and when the email was deleted routinely before the suit).

160. *Peskoff v. Faber*, 244 F.R.D. 54, 60–61 (D.D.C. 2007) (noting that sanctions are possible for the failure to disable an email auto-deletion function during the period following notice of pending litigation, but are not appropriate for failure to do so prior to notice of pending litigation).

161. *Oklahoma ex rel. Edmondson v. Tyson Foods, Inc.*, No. 05-CV-329, 2007 WL 1498973, at *6 (N.D. Okla. May 17, 2007) (admonishing the parties, in a case with voluminous ESI, to "be very cautious in relying upon any 'safe harbor' doctrine as described in new Rule 37(f)").

162. *U & I Corp. v. Advanced Med. Design, Inc.*, No. 8:06-CV-2041-T-17EAJ, 2007 WL 4181900, at *6 (M.D. Fla. Nov. 26, 2007) (construing Rule 37(f) as "govern[ing] a parties' [*sic*] failure to cooperate during discovery" and deferring consideration of sanctions pending the responding party's submission of an affidavit of a corporate representative explaining why certain emails were not available and detailing the efforts it made to obtain them).

163. *KCH Servs. Inc. v. Vanaire*, No. 05-777-C, 2009 WL 2216601, at *1 (W.D. Ky. July 22, 2009) (granting an adverse-inference jury instruction when the defendant ordered employees to delete certain software and evinced an "unwillingness to place a meaningful litigation hold on relevant electronic information after being placed on notice"); *Stratienko v. Chattanooga-Hamilton Cnty. Hosp. Auth.*, No. 1:07CV258, 2009 WL 2168717, at *4, *7 (E.D. Tenn. July 16, 2009) (awarding attorneys' fees to the plaintiff as a sanction after the defendant hospital reimaged the chief of medical staff's hard drive immediately after the chief's retirement and long after the hospital was on notice that electronic information on the hard drive could be relevant to the lawsuit); *Ripley v. District of Columbia*, No. 06-1705, slip op. at 9 (D.D.C. July 2, 2009) (holding that Rule 37(e) afforded no protection to a defendant that destroyed emails and denied the existence of a back-up tape after the plaintiff requested the emails and awarding attorneys' fees as a sanction because "[d]efendants . . . did not operate their e-mail system in a routine, good-faith manner"); *Phillip M. Adams & Assocs. v. Dell, Inc.*, 621 F. Supp. 2d 1173, 1191–92 (D. Utah 2009) (holding that the safe harbor was not available because the defendant discarded computer source code and failed to show reasonableness or good faith); *Technical*

these cases, three involved findings of intentional conduct,¹⁶⁴ one involved gross negligence,¹⁶⁵ one involved recklessness,¹⁶⁶ and two involved a failure by the responding party to show good faith.¹⁶⁷

Several courts have also held Rule 37(e) inapplicable to bar sanctions awarded under the court's inherent power or in cases in which Rule 37 did not govern the conduct giving rise to the sanction.¹⁶⁸ Courts have also declined to apply the rule for other reasons, including that the opposing party had not sought sanctions.¹⁶⁹

Sales Assocs. v. Ohio Star Forge Co., No. 07-11745 2009 WL 728520, at *7-8 (E.D. Mich. Mar. 19, 2009) (holding that the safe harbor did not apply to a finding of intentional conduct when emails were deleted during the discovery period and "just days" before the completion of searches for responsive documents); *Arista Records, LLC v. Usenet.com, Inc.*, 608 F. Supp. 2d 409, 431 n.31 (S.D.N.Y. 2009) (ruling that an online bulletin board had an obligation to preserve usage data, digital music files, and other material that was specifically requested, and noting that the Rule 37(e) safe harbor was not cited by the parties in briefing and "does not apply under the circumstances of this case"); *Pandora Jewelry, LLC v. Chamilia, LLC*, No. CCB-06-3041, 2008 WL 4533902, at *9 (D. Md. Sept. 30, 2008) (concluding that while the moving party submitted no evidence that the defendant acted in bad faith, the defendant "appear[ed]" grossly negligent in failing to preserve documents after the duty to preserve attached); *Keithley v. Home Store.com, Inc.*, No. C-03-04447 SI (EDL), 2008 WL 3833384, at *6 (N.D. Cal. Aug. 12, 2008) ("Defendants did not satisfy their duty to preserve even after this lawsuit was filed and recklessly allowed the destruction of some relevant [data] as late as 2004."); *MeccaTech Inc., v. Kiser*, No. 8:05CV570, 2008 WL 6010937 at *9 (D. Neb. Apr. 2, 2008) (awarding a sanction based on an express finding that ESI was intentionally destroyed or withheld and was not lost through the good-faith operation of an electronic information system); *Doe v. Norwalk Cmty. Coll.*, 248 F.R.D. 372, 378 (D. Conn. 2007) (holding that to take advantage of the good faith exception of the safe harbor rule "a party needs to act affirmatively to prevent the system from destroying or altering information, even if such destruction would occur in the regular course of business"); *Cache La Poudre Feeds, LLC v. Land O'Lakes, Inc.*, 244 F.R.D. 614, 636-37 (D. Colo. 2007) (ruling that a party's failure to implement and monitor an adequate records preservation program, including the wiping of hard drives, and the counsel's failure to properly monitor the discovery process, did not substantially prejudice the moving party but nevertheless did interfere with the judicial process, warranting a monetary sanction of \$5,000); *United States v. Krause (In re Krause)*, 367 B.R. 740, 767, 770-72 (Bankr. D. Kan. 2007) (ordering sanctions against a debtor in a Chapter 7 liquidation proceeding because the debtor "willfully and intentionally destroyed electronically stored evidence"), *aff'd*, Nos. 08-1132, 08-1136, 2009 WL 5064348 (D. Kan. Dec. 16, 2009).

164. *Technical Sales Assocs.*, 2009 WL 728520, at *7-8; *MeccaTech*, 2008 WL 6010937, at *9; *In re Krause*, 367 B.R. at 767, 770.

165. *Pandora Jewelry*, 2008 WL 4533902, at *9.

166. *Keithley*, 2008 WL 3833384, at *6.

167. *Ripley*, slip op. at 9; *Phillip M. Adams & Assocs.*, 621 F. Supp. 2d at 1191-92.

168. *Nucor Corp. v. Bell*, 251 F.R.D. 191, 196 n.3 (D.S.C. 2008) (holding that Rule 37(e) was inapplicable to the consideration of sanctions for a party's intentional spoliation when the sanctions were issued pursuant to the court's inherent authority, not the Federal Rules); *see also Johnson v. Wells Fargo Home Mortg., Inc.*, No. 3:05-CV-0321-RAM, 2008 WL 2142219, at *3 n.1 (D. Nev. May 16, 2008) (awarding sanctions consisting of an adverse-inference instruction in a Fair Credit Reporting Act case when the plaintiff erased data from hard drives after the data

In summary, the safe harbor was intended to provide limited protection, and it has. Parties or counsel seeking refuge from the increasing sanction-motion practice will be able to reach Rule 37(e)'s refuge only in very limited situations. Since the rule's adoption, approximately two cases per year have met its requirements.

CONCLUSION

Sanction motions and sanction awards for e-discovery violations have been trending ever-upward for the last ten years and have now reached historic highs. At the same time, the frequency of sanctions against counsel for e-discovery violations, though small in number, is also increasing. Although serious e-discovery misconduct by parties and counsel should continue to be the subject of sanctions, appropriate consideration should be given to the complexity of e-discovery in ruling upon the increasingly frequent e-discovery sanction motion.

were requested by the defendant and holding that the Rule 37(e) safe harbor was "inapplicable under these facts because the conduct giving rise to this action was not in violation of any discovery order governed by Rule 37").

169. *In re Intel Corp. Microprocessor Antitrust Litig.*, 258 F.R.D. 280, 282 n.5 (D. Del. 2008) (refusing to apply the Rule 37(f) safe harbor even though it was cited by the defendants in a letter to the court describing its email system's auto-delete function); *Orrell v. Motorcarparts of Am., Inc.*, No. 3:06CV418-R, 2007 WL 4287750, at *7 (W.D.N.C. Dec. 5, 2007) (ordering, in an employment case, that the plaintiff, who had "wiped" her laptop and was found to have served deficient discovery responses, serve complete responses and provide her home computer to defendants for forensic examination, and citing Rule 37(e), even though sanctions were neither sought nor awarded); *Disability Rights Council v. Wash. Metro. Transit Auth.*, 242 F.R.D. 139, 146 (D.D.C. 2007) (holding that Rule 37(e) was inapplicable because no sanctions were sought and because of the "indefensible" failure to disable "auto-delete" during the course of litigation).

APPENDIX A

ALL CASES

No.	Case	Primary Case Type
1	ABC Home Health Servs., Inc. v. IBM Corp., 158 F.R.D. 180 (S.D. Ga. 1994)	Contract
2	Acorn v. County of Nassau, No. CV 05-2301, 2009 WL 605859 (E.D.N.Y. Mar. 9, 2009)	Civil Rights
3	Adams v. Gateway, Inc., No. 2:02-CV-106, 2006 WL 2563418 (D. Utah Mar. 6, 2006)	Intellectual Property
4	Adorno v. Port Auth., 258 F.R.D. 217 (S.D.N.Y. 2009)	Employment
5	AdvantaCare Health Partners, LP v. Access IV, No. 03-4496 JF, 2004 WL 1837997 (N.D. Cal. Aug. 17, 2004)	Commercial
6	Advante Int'l Corp. v. Mintel Learning Tech., No. C 05-01022JW (RS), 2008 WL 928332 (N.D. Cal. Apr. 4, 2008)	Intellectual Property
7	Aecon Bldgs., Inc. v. Zurich N. Am., 253 F.R.D. 655 (W.D. Wash. 2008)	Insurance
8	Aero Prods. Int'l, Inc. v. Intex Recreation Corp., No. 02 C 2590, 2004 WL 417193 (N.D. Ill. Jan. 30, 2004)	Intellectual Property
9	Ajaxo Inc., v. Bank of Am. Tech. & Operations, Inc., No. CIV-S-07-0945 GEB GGH, 2008 WL 5101451 (E.D. Cal. Dec. 2, 2008)	Intellectual Property
10	Allen Pen Co. v. Springfield Photo Mount Co., 653 F.2d 17 (1st Cir. 1981)	Antitrust
11	Allianz Ins. Co. v. Otero, 353 F. Supp. 2d 415 (S.D.N.Y. 2004)	Insurance
12	Am. Family Mut. Ins. Co. v. Roth, No. 05 C 3839, 2009 WL 982788 (N.D. Ill. Feb. 20, 2009)	Commercial
13	Am. Friends of Yeshivat Ohr Yerushalayim, Inc. v. United States, No. 04-CV-1798, 2009 WL 1617773 (E.D.N.Y. June 9, 2009)	Tax Refund Action
14	Ameriwood Indus. v. Liberman, No. 4:06CV524-DJS, 2007 WL 5110313 (E.D. Mo. July 3, 2007)	Commercial
15	Anadarko Petrol. Corp. v. Davis, No. H-06-2849, 2006 U.S. Dist. LEXIS 93594 (S.D. Tex. Dec. 28, 2006)	Commercial
16	Anderson v. Am. Airlines, Inc., No. 05-04292, 2008 WL 4816620 (N.D. Cal. Nov. 5, 2008), <i>aff'd</i> , No. 08-16859, 2009 WL 3698566 (9th Cir. Nov. 6, 2009)	Employment
17	Anderson v. Crossroads Capital Partners, LLC, No. 01-2000, 2004 WL 256512 (D. Minn. Feb. 10, 2004)	Employment
18	Angelotti v. Roth, No. 06-10068, 2006 WL 3666849 (S.D. Fla. Nov. 17, 2006)	Civil Rights
19	APC Filtration, Inc. v. Becker, No. 07 CV 1462, 2007 WL 3046233 (N.D. Ill. Oct. 12, 2007)	Commercial
20	Appraisal Mgmt. Co. III v. FNC, Inc., No. 1:04CV1158, 2005 WL 3088561 (N.D. Ohio Nov. 17, 2005)	Contract
21	Arista Records, Inc. v. Sakfield Holding Co., 314 F. Supp. 2d 27 (D.D.C. 2004)	Intellectual Property

No.	Case	Primary Case Type
22	Arista Records, L.L.C. v. Tschirhart, 241 F.R.D. 462 (W.D. Tex. 2006)	Intellectual Property
23	Arista Records LLC v. Usenet.com, Inc., 633 F. Supp. 2d 124 (S.D.N.Y. 2009)	Intellectual Property
24	Armamburu v. Healthcare Fin. Servs., Inc., No. 2002-6535, 2007 WL 2020181 (E.D.N.Y. July 6, 2007)	Federal Statutory Cause of Action
25	Armisted v. State Farm Mut. Auto. Ins. Co., No. 07-10259, 2009 WL 81103 (E.D. Mich. Jan. 9, 2009)	Insurance
26	Armstrong v. Amstead Indus., No. 01 C 2963, 2004 WL 1497779 (N.D. Ill. July 2, 2004)	Employment
27	Arteria Prop. Pty Ltd. v. Universal Funding V.T.O., Inc., No. 05-4896 (PGS), 2008 WL 4513696 (D.N.J. Oct. 1, 2008)	Contract
28	Atl. Recording Corp. v. Howell, No. CV-06-02076-PHX-NVW, 2008 WL 4080008 (D. Ariz. Aug. 29, 2008)	Intellectual Property
29	Attard v. City of New York, No. 05 CV 2129(JG)(RML), 2008 WL 1991107 (E.D.N.Y. May 5, 2008)	Employment
30	Auto. Inspection Servs., Inc. v. Flint Auto Auction, Inc., No. 06-15100, 2007 WL 3333016 (E.D. Mich. Nov. 9, 2007)	Contract
31	Autotech Techs. Ltd. P'ship v. Automationdirect.com, Inc., No. 05 C 5488, 2008 WL 783301 (N.D. Ill. Mar. 25, 2008)	Commercial
32	Babaev v. Grossman, No. CV03-5076(DLI)(WDW), 2008 WL 4185703 (E.D.N.Y. Sept. 8, 2008)	Commercial
33	Bakhtiari v. Lutz, 507 F.3d 1132 (8th Cir. 2007)	Civil Rights
34	Ball v. Versar, Inc., No. IP 01-0531-C, 2005 WL 4881102 (S.D. Ind. Sept. 23, 2005)	Contract
35	Barrett v. Ambient Pressure Diving, Ltd., No. 06-CV-240, 2008 WL 4280360 (D.N.H. Sept. 16, 2008)	Tort
36	Bashir v. Amtrak, 119 F.3d 929 (11th Cir. 1997)	Tort
37	Bensel v. Allied Pilots Ass'n, 263 F.R.D. 150 (D.N.J. 2009)	Contract
38	Benton v. Dlorah, Inc., No. 06-CV-2488, 2007 WL 3231431 (D. Kan. Oct. 30, 2007)	Employment
39	Bishop v. Toys "R" Us-NY, LLC, No. 04-CV-9403, 2007 WL 2042913 (S.D.N.Y. July 13, 2007)	Tort
40	Black & Veatch Int'l Co. v. Foster Wheeler Energy Corp., 211 F.R.D. 641 (D. Kan. 2002)	Contract
41	Blangsted v. Snowmass-Wildcat Fire Prot. Dist., 642 F. Supp. 2d 1250 (D. Colo. 2009)	Civil Rights
42	Bd. of Regents v. BASF Corp., No. 4:04CV3356, 2007 WL 3342423 (D. Neb. Nov. 5, 2007)	Contract
43	Bolger v. District of Columbia, 608 F. Supp. 2d 10 (D.D.C. 2009)	Civil Rights
44	Bray & Gillespie Mgmt. LLC v. Lexington Ins. Co. (<i>Bray & Gillespie II</i>), 259 F.R.D. 591 (M.D. Fla.), <i>rejected in part</i> by No. 6:07-cv-0222-Orl-35KRS, 2009 WL 5606058 (M.D. Fla. Nov. 11, 2009), <i>and adopted in part</i> by No. 6:07-cv-0222-Orl-35KRS, 2010 WL 55595 (M.D. Fla. Jan. 5, 2010)	Insurance

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45	Brick v. HSBC Bank USA, No. 04-CV-0129E(F), 2004 WL 1811430 (W.D.N.Y. Aug. 11, 2004)	Bankruptcy
46	Broccoli v. Echostar Commc'ns Corp., 229 F.R.D. 506 (D. Md. 2005)	Employment
47	Brookhaven Typesetting Servs., Inc. v. Adobe Sys., Inc., 332 F. App'x 387 (9th Cir. 2009)	Intellectual Property
48	Bryant v. Gardner, 587 F. Supp. 2d 951 (N.D. Ill. 2008)	Civil Rights
49	Buckley v. Mukasey, 538 F.3d 306 (4th Cir. 2008)	Employment
50	Burkybile v. Mitsubishi Motors Corp., No. 04 C 4932, 2006 WL 3191541 (N.D. Ill. Oct. 17, 2006)	Contract
51	Burrell v. Anderson, 353 F. Supp. 2d 55 (D. Me. 2005)	Civil Rights
52	Buskey v. Bos. Mkt. Corp., No. 04 CV 2193, 2006 WL 2527826 (E.D.N.Y. Aug. 14, 2006)	Tort
53	Cabinetware Inc. v. Sullivan, No. Civ. S. 90-313CLKK, 1991 WL 327959 (E.D. Cal. July 15, 1991)	Intellectual Property
54	Cache La Poudre Feeds, LLC v. Land O'Lakes, Inc., 244 F.R.D. 614 (D. Colo. 2007)	Intellectual Property
55	Calixto v. Watson Bowman Acme Corp., No. 07-60077, 2009 WL 3823390 (S.D. Fla. Nov. 16, 2009)	Contract
56	Canon U.S.A., Inc. v. S.A.M., Inc., No. 07-01201, 2008 WL 2522087 (E.D. La. June 20, 2008)	Contract
57	Canton v. Kmart Corp., No. 1:05-cv-143, 2009 WL 2058908 (D.V.I. July 13, 2009)	Tort
58	Cardenas v. Dorel Juvenile Grp., Inc., No. 04-2478, 2006 WL 1537394 (D. Kan. June 1, 2006)	Tort
59	Century ML-Cable Corp. v. Carrillo, 43 F. Supp. 2d 176 (D.P.R. 1998)	Commercial
60	Chevron U.S.A., Inc. v. M & M Petrol. Servs., Inc., No. SACV 07-0818 DOC (ANx), 2009 WL 2431926 (C.D. Cal. Aug. 6, 2009)	Federal Statutory Causes of Action
61	Chirido v. Minerals Techs., Inc., No. 06-5523, 2009 WL 2195135 (E.D. Pa. July 23, 2009)	Employment
62	Cimaglia v. Union Pac. R.R., No. 6-CV-3084, 2009 WL 87426 (C.D. Ill. Jan. 12, 2009)	Tort
63	Claredi Corp. v. Seebeyond Tech. Corp., No. 4:04CV1304 RWS, 2007 WL 735018 (E.D. Mo. Mar. 8, 2007)	Contract
64	Clark Constr. Grp., Inc. v. City of Memphis, 229 F.R.D. 131 (W.D. Tenn. 2005)	Contract
65	Columbia Pictures, Inc. v. Bunnell, No. 2:06-cv-01093 FMC-JCx, 2007 WL 4877701 (C.D. Cal. Dec. 13, 2007)	Intellectual Property
66	Columbus McKinnon Corp. v. HealthNow N.Y., Inc., No. 03-CV-0831, 2006 WL 2827675 (W.D.N.Y. Sept. 29, 2006)	Insurance
67	Commc'ns Ctr., Inc. v. Hewitt, No. Civ.S-03-1968 WBS KJ, 2005 WL 3277983 (E.D. Cal. Apr. 5, 2005)	Commercial
68	Computer Assocs. Int'l, Inc. v. Am. Fundware, Inc., 133 F.R.D. 166 (D. Colo. 1990)	Contract
69	Computer Task Grp., Inc. v. Brotby, 364 F.3d 1112 (9th Cir. 2004)	Contract

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70	Concord Boat Corp. v. Brunswick Corp., No. 95-781, 1997 WL 33352759 (E.D. Ark. Aug. 29, 1997)	Antitrust
71	Connor v. Sun Trust Bank, 546 F. Supp. 2d 1360 (N.D. Ga. 2008)	Employment
72	Consol. Aluminum Corp. v. Alcoa, Inc., 244 F.R.D. 335 (M.D. La. 2006)	Contract
73	Consol. Edison Co. of N.Y. v. United States, 90 Fed. Cl. 228 (2009)	Tax Refund Action
74	Convolve, Inc. v. Compaq Computer Corp., 223 F.R.D. 162 (S.D.N.Y. 2004), <i>clarified by</i> No. 00 Civ. 5141, 2005 WL 1514284 (S.D.N.Y. June 24, 2005)	Intellectual Property
75	Cornell Research Found., Inc. v. Hewlett-Packard Co., No. 5:01-CV-1974 (NAM/DEP), 2006 WL 5097357 (N.D.N.Y. Nov. 13, 2006), <i>clarified by</i> No. 5:01-CV-1974 (NAM/DEP), 2007 WL 4324094 (N.D.N.Y. May 16, 2007), <i>aff'd</i> , No. 01-CV-1974, 2007 WL 4302778 (N.D.N.Y. July 23, 2007)	Intellectual Property
76	Covad Commc'ns Co. v. Revonet, Inc., 260 F.R.D. 5 (D.D.C. 2009)	Contract
77	CP Solutions PTE, Ltd. v. Gen. Elec. Co., No. 3:04CV2150, 2006 WL 1272615 (D. Conn. Feb. 6, 2006)	Contract
78	Crandall v. City & County of Denver, No. 05-CV-00242, 2006 WL 2683754 (D. Colo. Sept. 19, 2006)	Tort
79	Creative Sci. Sys., Inc. v. Forex Capital Mkts., LLC, No. C 04-03746 JE(RS), 2006 WL 870973 (N.D. Cal. Apr. 4, 2006)	Intellectual Property
80	Crown Life Ins. Co. v. Craig, 995 F.2d 1376 (7th Cir. 1993)	Contract
81	CSI Inv. Partners II, L.P. v. Cendant Corp., 507 F. Supp. 2d 384 (S.D.N.Y. 2007), <i>aff'd</i> , 328 F. App'x 56 (2d Cir. 2009)	Securities
82	Cumberland Truck Equip. Co. v. Detroit Diesel Corp., No. 05-CV-74594-DT, 2008 WL 5111894 (E.D. Mich. Dec. 2, 2008)	Antitrust
83	Cyntegra, Inc. v. Idexx Labs., Inc., No. CV 06-4170 PSG (CTx), 2007 WL 5193736 (C.D. Cal. Sept. 21, 2007), <i>aff'd</i> , 322 F. App'x 569 (9th Cir. 2009)	Antitrust
84	Daewoo Elecs. Co. v. United States, 650 F. Supp. 1003 (Ct. Int'l Trade 1986)	Commercial
85	DaimlerChrysler Motors v. Bill Davis Racing, Inc., No. CIV.A. 03-72265, 2005 WL 3502172 (E.D. Mich. Dec. 22, 2005)	Contract
86	Danis v. USN Commc'ns, Inc., No. 98 C 7482, 2000 WL 1694325 (N.D. Ill. Oct. 23, 2000)	Securities
87	DE Techs., Inc. v. Dell, Inc., No. Civ.A. 7:04CV00628, 2007 WL 128966 (W.D. Va. Jan. 12, 2007)	Intellectual Property
88	DeLoach v. Philip Morris Cos., 206 F.R.D. 568 (M.D.N.C. 2002)	Antitrust
89	Diabetes Ctrs. of Am., Inc. v. Health Pia Am., Inc., No. H-06-3457, 2008 WL 336382 (S.D. Tex. Feb. 5, 2008)	Contract
90	Digene Corp. v. Third Wave Techs., Inc., No. 07-C-22-C, 2007 WL 4939048 (W.D. Wis. Oct. 24, 2007)	Intellectual Property

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91	Dilts v. Maxim Crane Works, L.P., No. CIV. A. 07-38, 2009 WL 3161362 (E.D. Ky. Sept. 28, 2009)	Tort
92	DirecTV, Inc. v. Borow, No. 03 C 2581, 2005 WL 43261 (N.D. Ill. Jan. 6, 2005)	Federal Statutory Cause of Action
93	Doctor John's, Inc. v. City of Sioux City, 486 F. Supp. 2d 953 (N.D. Iowa 2007)	Constitutional
94	Doe v. Norwalk Cmty. Coll., 248 F.R.D. 372 (D. Conn. 2007)	Federal Statutory Cause of Action
95	Dong Ah Tire & Rubber Co. v. Glasforms, Inc., No. C 06-3359 JF (RS), 2008 WL 4786671 (N.D. Cal. Oct. 29, 2008)	Contract
96	D'Onofrio v. SFX Sports Grp., Inc., 247 F.R.D. 43 (D.D.C. 2008)	Employment
97	Dowling v. United States, No. 2000-CV-0049, 2008 WL 4534174 (D.V.I. Oct. 6, 2008)	Contract
98	Drnek v. Variable Annuity Life Ins. Co., No. CIV 01-242, 2004 WL 1098919 (D. Ariz. May 4, 2004), <i>aff'd</i> , 261 F. App'x 50 (9th Cir. 2007)	Securities
99	Durbin v. Kuryakyn Holdings, Inc., No. 06-C-0039-C, 2006 WL 6040466 (W.D. Wis. Nov. 7, 2006)	Intellectual Property
100	Durst v. FedEx Express, No. 03-5186, 2006 WL 1541027 (D.N.J. June 2, 2006)	Employment
101	Dziadkiewicz v. Blue Cross & Blue Shield of R.I., No. C.A.96-275S, 2004 WL 2418308 (D.R.I. Oct. 13, 2004, Oct. 21, 2004)	Insurance
102	E*Trade Sec. LLC v. Deutsche Bank AG, 230 F.R.D. 582 (D. Minn. 2005)	Securities
103	E. Coast Brokers & Packers, Inc. v. Seminis Vegetable Seeds, Inc., No. 8:07-CV-17126-T-26TBM, 2009 WL 361281 (M.D. Fla. Feb. 9, 2009)	Commercial
104	Easton Sports, Inc. v. Warrior LaCrosse, Inc., No. 05-72031, 2006 WL 2811261 (E.D. Mich. Sept. 28, 2006)	Commercial
105	Edelen v. Campbell Soup Co., Civil Action No. 1:08-cv-00299-JOF-LTW, 2009 WL 4798117 (N.D. Ga. Dec. 8, 2009)	Civil Rights
106	Elec. Mach. Enters. v. Hunt Constr. Grp., Inc. (<i>In re</i> Elec. Mach. Enters.), 416 B.R. 801 (Bankr. M.D. Fla. 2009)	Bankruptcy
107	Elion v. Jackson, Civil Action No. 05-0992 (PLF), 2006 WL 2583694 (D.D.C. Sept. 8, 2006)	Employment
108	Escobar v. City of Houston, No. 04-1945, 2007 WL 2900581 (S.D. Tex. Sept. 29, 2007)	Tort; Civil Rights
109	de Espana v. Am. Bureau of Shipping, No. 03 Civ. 3573(LTS)RLE, 2007 WL 1686327 (S.D.N.Y. June 6, 2007)	Environmental
110	Exact Software N. Am., Inc. v. Infocon, Inc., 479 F. Supp. 2d 702 (N.D. Ohio 2006)	Contract
111	Fendi Adele S.R.L. v. Filene's Basement, Inc., No. 06 Civ. 244, 2009 WL 855955 (S.D.N.Y. Mar. 24, 2009)	Intellectual Property
112	Ferrero v. Henderson, 341 F. Supp. 2d 873 (S.D. Ohio 2004), <i>withdrawn in part</i> , No. 3:00CV00462, 2005 WL 1802134 (S.D. Ohio July 28, 2005)	Employment

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113	Ferron v. Echostar Satellite, LLC, 658 F. Supp. 2d 859 (S.D. Ohio 2009)	Commercial
114	Pharmacy Records v. Nassar (<i>Pharmacy Records I</i>), 248 F.R.D. 507 (E.D. Mich. 2008), <i>aff'd</i> , 379 F. App'x 522 (6th Cir. 2010)	Intellectual Property
115	Finley v. Hartford Life & Accident Ins. Co., 249 F.R.D. 329 (N.D. Cal. 2008)	Insurance
116	Fleming v. City of New York, No. 01 Civ. 8885, 2007 WL 4302501 (S.D.N.Y. Dec. 7, 2007)	Civil Rights
117	Floeter v. City of Orlando, No. 605CV-400-ORL-22KRS, 2007 WL 486633 (M.D. Fla. Feb. 9, 2007)	Civil Rights
118	Forest Labs., Inc. v. Caraco Pharm. Labs., Ltd., No. 06-CV-13143, 2009 WL 998402 (E.D. Mich. Apr. 14, 2009)	Intellectual Property
119	Fortis Corporate Ins., SA v. Viken Ship Mgmt. AS, No. 3:04CV7048, 2007 WL 3287357 (N.D. Ohio Nov. 5, 2007)	Insurance
120	Fox v. Riverdeep, Inc., No. 07-CV-13622, 2008 WL 5244297 (E.D. Mich. Dec. 16, 2008)	Intellectual Property; Contract
121	Frey v. Gainey Transp. Servs., Inc., No. 1:05-CV-1493-JOF, 2006 WL 2443787 (N.D. Ga. Aug. 22, 2006)	Tort
122	G.K. Las Vegas Ltd. P'ship v. Simon Prop. Grp., Inc., 671 F. Supp. 2d 1203 (D. Nev. 2009)	Commercial
123	Gamby v. First Nat'l Bank of Omaha, No. 06-11020, 2009 WL 127782 (E.D. Mich. Jan. 20), <i>objection denied</i> , 2009 WL 963116 (E.D. Mich. Apr. 8, 2009)	Federal Statutory Cause of Action
124	Gates Rubber Co. v. Bando Chem. Indus., 167 F.R.D. 90 (D. Colo. 1996)	Commercial
125	GE Harris Ry. Elecs., L.L.C. v. Westinghouse Air Brake Co., No. 99-070-GMS, 2004 WL 5702740 (D. Del. Mar. 29, 2004)	Intellectual Property
126	Gen. Med., PC v. Morning View Care Ctrs., No. 2:05-CV-439, 2006 WL 2045890 (S.D. Ohio July 20, 2006)	Contract
127	Getty Props. Corp. v. Raceway Petrol., Inc., No. 99-CV-4395DMC, 2005 WL 1412134 (D.N.J. June 14, 2005)	Contract
128	Giant Screen Sports LLC v. Sky High Entm't, No. 05 C 7184, 2007 WL 627607 (N.D. Ill. Feb. 27, 2007)	Contract
129	Gippetti v. United Parcel Serv., Inc., No. C07-00812 RMW (HRL), 2008 WL 3264483 (N.D. Cal. Aug. 6, 2008)	Employment
130	Glass v. Beer, No. 1:04-CV-05466-OWW-SMS PC, 2007 WL 1456059 (E.D. Cal. May 17, 2007)	Civil Rights
131	Global Ampersand, LLC v. Crown Eng'g & Constr., Inc., 261 F.R.D. 495 (E.D. Cal. 2009)	Contract
132	Goldman v. Healthcare Mgmt. Sys., Inc., No. 1:05-CV-35, 2006 WL 3589065 (W.D. Mich. Dec. 8, 2006)	Intellectual Property; Antitrust
133	Goodbys Creek, LLC v. Arch Ins. Co., No. 3:07-CV-947-J-34HTS, 2008 WL 4279693 (M.D. Fla. Sept. 15, 2008)	Contract
134	Goodman v. Praxair Servs., Inc., 632 F. Supp. 2d 494 (D. Md. 2009)	Contract

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135	Google Inc. v. Am. Blind & Wallpaper Factory, Inc., No. C 03-5340 JF (RS), 2007 WL 1848665 (N.D. Cal. June 27, 2007)	Intellectual Property
136	Grange Mut. Cas. Co. v. Mack, 270 F. App'x 372 (6th Cir. 2008) (per curiam)	Federal Statutory Cause of Action
137	Grantley Patent Holdings, Ltd. v. Clear Channel Commc'ns, Inc., Civil Action No. 9:06CV259, 2008 WL 7701186 (E.D. Tex. Apr. 4, 2008)	Intellectual Property
138	Great Am. Ins. Co. of N.Y. v. Lowry Dev., LLC, Civil Action Nos. 106CV097 LTS-RHW, 1:06CV412 LTS-RHW, 2007 WL 4268776 (S.D. Miss. Nov. 30, 2007)	Insurance
139	Greyhound Lines, Inc. v. Wade, 485 F.3d 1032 (8th Cir. 2007)	Tort
140	Grider v. Keystone Health Plan Cent., 580 F.3d 119 (3d Cir. 2009)	Insurance
141	Grochocinski v. Schlossberg, 402 B.R. 825 (N.D. Ill. 2009)	Bankruptcy
142	GSI Grp., Inc. v. Sukup Mfg. Co., No. 05-3011, 2008 WL 3849695 (C.D. Ill. Aug. 18, 2008)	Intellectual Property
143	GTFM, Inc. v. Wal-Mart Stores, Inc., No. 98 CIV. 7724 RPP, 2000 WL 335558 (S.D.N.Y. Mar. 30, 2000)	Intellectual Property
144	Gucci Am., Inc., v. Gucci, No. 07 Civ. 6820(RMB)(JCF), 2009 WL 440463 (S.D.N.Y. Feb. 20, 2009)	Intellectual Property
145	Gutman v. Klein, No. 03 CV 1570(BMC)(RML), 2008 WL 4682208 (E.D.N.Y. Oct. 15), <i>adopted by</i> No. 03 Civ. 1570(BMC), 2008 WL 5084182 (E.D.N.Y. Dec. 2, 2008)	Commercial
146	GW Equity LLC v. Xcentric Ventures LLC, No. 3:07-CV-976-O, 2009 WL 62168 (N.D. Tex. Jan. 9, 2009)	Tort
147	Hahn v. Minn. Beef Indus., Inc., No. 00-2282 RHKSRN, 2002 WL 32667146 (D. Minn. Mar. 8, 2002)	Employment
148	Hamilton v. Signature Flight Support Corp., No. 05-0490 CW (MEJ), 2005 WL 3481423 (N.D. Cal. Dec. 20, 2005)	Employment
149	Hanni v. Am. Airlines, Inc., No. C-08-00732 CW (EDL), 2009 WL 1505286 (N.D. Cal. May 27, 2009)	Tort
150	Hawaiian Airlines, Inc. v. Mesa Air Grp., Inc. (<i>In re</i> Hawaiian Airlines, Inc.), Bankr. No. 03-00817, Adv. No. 06-90026, 2007 WL 3172642 (Bankr. D. Haw. Oct. 30, 2007)	Bankruptcy
151	Healthcare Advocates, Inc. v. Harding, Earley, Follmer & Frailey, 497 F. Supp. 2d 627 (E.D. Pa. 2007)	Intellectual Property
152	Heartland Surgical Specialty Hosp., LLC v. Midwest Div., Inc., No. 05-2164-MLB-DWB, 2007 WL 1054279 (D. Kan. Apr. 9, 2007)	Antitrust
153	Hendricks v. Smartvideo Techs., Inc., 511 F. Supp. 2d 1219 (M.D. Fla. 2007)	Contract
154	Hewlett v. Davis, Civil Action No. 86-3708, 1987 WL 12298 (E.D. Pa. June 3, 1987), <i>aff'd in part and rev'd in part</i> , 844 F.2d 109 (3d Cir. 1988)	Civil Rights

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155	Holt v. Nw. Mut. Life Ins. Co., No. 1:04-CV-280, 2005 WL 3262420 (W.D. Mich. Nov. 30, 2005)	Insurance
156	Hous. Rights Ctr. v. Sterling, No. CV 03-859 DSF, 2005 WL 3320739 (C.D. Cal. Mar. 2, 2005)	Federal Statutory Cause of Action
157	Hynix Semiconductor Inc. v. Rambus, Inc., 591 F. Supp. 2d 1038 (N.D. Cal. 2006)	Intellectual Property
158	Ibarra v. Baker, 338 F. App'x 457 (5th Cir. 2009)	Civil Rights
159	Ill. Tool Works, Inc. v. Metro Mark Prods., Ltd., 43 F. Supp. 2d 951 (N.D. Ill. 1999)	Commercial
160	Oscher v. Solomon Tropp Law Grp., P.A. (<i>In re</i> Atl. Int'l Mortg. Co.), 352 B.R. 503 (Bankr. M.D. Fla. 2006)	Bankruptcy
161	<i>In re</i> Atl. Marine Prop. Holding Co., Civil Action No. 06-0100-CG-B, 2009 WL 1211399 (S.D. Ala. Apr. 29, 2009)	Tort
162	<i>In re</i> Cheyenne Software, Inc., Sec. Litig., No. CV-94-2771(NG), 1997 WL 714891 (E.D.N.Y. Aug. 18, 1997)	Securities
163	<i>In re</i> Direct Sw., Inc., Fair Labor Standards Act (FLSA) Litig., No. 08-1984-MLCF-SS, 2009 WL 1160454 (E.D. La. Apr. 29, 2009)	Employment
164	Cohen Steel Supply, Inc. v. Fagnant (<i>In re</i> Fagnant), Nos. 03-10496-JMD, 03-1348-JMD, 2004 WL 2944126 (Bankr. D.N.H. Dec. 13, 2004)	Bankruptcy
165	<i>In re</i> Fannie Mae Sec. Litig., 552 F.3d 814 (D.C. Cir. 2009)	Securities
166	<i>In re</i> Kessler, No. 05 CV 6056(SJF)(AKT), 2009 WL 2603104 (E.D.N.Y. Mar. 27, 2009)	Insurance
167	<i>In re</i> Kmart Corp., 371 B.R. 823 (Bankr. N.D. Ill. 2007)	Bankruptcy
168	United States v. Krause (<i>In re</i> Krause), 367 B.R. 740 (Bankr. D. Kan. 2007), <i>aff'd</i> , Nos. 08-1132, 08-1136, 2009 WL 5064348 (D. Kan. Dec. 16, 2009)	Bankruptcy
169	<i>In re</i> LTV Steel Co., 307 B.R. 37 (Bankr. N.D. Ohio 2004)	Bankruptcy
170	<i>In re</i> Napster, Inc. Copyright Litig., 462 F. Supp. 2d 1060 (N.D. Cal. 2006)	Intellectual Property
171	<i>In re</i> Nat'l Century Fin. Enters., Inc. Fin. Inv. Litig., No. 2:03-MD-1565, 2009 WL 87618 (S.D. Ohio Jan. 8, 2009)	Commercial
172	<i>In re</i> NTL, Inc. Sec. Litig., 244 F.R.D. 179 (S.D.N.Y. 2007), <i>aff'd sub nom.</i> Gordon Partners v. Blumenthal, No. 02 Civ. 7377(LAK), 2007 WL 1518632 (S.D.N.Y. May 17, 2007)	Securities
173	<i>In re</i> Old Banc One S'holders Sec. Litig., No. 00 C 2100, 2005 WL 3372783 (N.D. Ill. Dec. 8, 2005)	Securities
174	<i>In re</i> Quintus Corp., 353 B.R. 77 (Bankr. D. Del. 2006), <i>aff'd in part</i> , Nos. 01-501, 01-502, 01-503, Adv. No. 04-53074, Civ. No. 06-769 SLR, 2007 WL 4233665 (D. Del. Nov. 29, 2007)	Bankruptcy
175	Riverside HealthCare, Inc. v. Sysco Food Servs. (<i>In re</i> Riverside Healthcare, Inc.), 393 B.R. 422 (Bankr. M.D. La. 2008)	Bankruptcy

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176	<i>In re</i> Rosenthal, Civil Action No. H-04-186, 2008 WL 983702 (S.D. Tex. Mar. 28, 2008)	Civil Rights
177	<i>In re</i> Sept. 11th Liab. Ins. Coverage Cases, 243 F.R.D. 114 (S.D.N.Y. 2007)	Insurance
178	<i>In re</i> Seroquel Prods. Liab. Litig., 244 F.R.D. 650 (M.D. Fla. 2007)	Tort
179	<i>In re</i> Telxon Corp. Sec. Litig., Nos. 5:98CV2876, 1:01CV1078, 2004 WL 3192729 (N.D. Ohio July 16, 2004)	Securities
180	<i>Infinite Energy, Inc. v. Thai Heng Chang</i> , No. 1:07CV23-SPM-AK, 2008 WL 4098329 (N.D. Fla. Aug. 29, 2008)	Contract
181	<i>Innis Arden Golf Club v. Pitney Bowes, Inc.</i> , 257 F.R.D. 334 (D. Conn. 2009)	Environmental
182	<i>Inst. for Motivational Living, Inc. v. Doulos Inst. for Strategic Consulting, Inc.</i> , 110 F. App'x 283 (3d Cir. 2004)	Intellectual Property
183	<i>Inventory Locator Serv., LLC v. PartsBase, Inc.</i> , No. 02-2695-MaV, 2005 WL 6062855 (W.D. Tenn. Oct. 19, 2005)	Tort
184	<i>Invision Media Commc'ns, Inc. v. Fed. Ins. Co.</i> , No. 02Civ.5461(NRB)(KNF), 2004 WL 396037 (S.D.N.Y. Mar. 2, 2004)	Insurance
185	<i>Itzenson ex rel. DePhillipo v. Hartford Life & Accident Ins. Co.</i> , No. CIV. A. 99-4475, 2000 WL 1507422 (E.D. Pa. Oct. 10, 2000)	Insurance
186	<i>Jacobson v. Starbucks Coffee Co.</i> , No. 05-1338-JTM, 2006 WL 3146349 (D. Kan. Oct. 31, 2006)	Employment
187	<i>Jinks-Umstead v. England</i> , No. 99-2691, 2005 WL 3312947 (D.D.C. Dec. 7, 2005)	Employment
188	<i>Johnson v. Wells Fargo Home Mortg., Inc.</i> , No. 3:05-CV-0321-RAM, 2008 WL 2142219 (D. Nev. May 16, 2008)	Federal Statutory Cause of Action
189	<i>Jones v. Hawley</i> , 255 F.R.D. 51 (D.D.C. 2009)	Employment
190	<i>JPMorgan Chase Bank, N.A. v. Neovi, Inc.</i> , No. 2:06-CV-0095, 2007 WL 1514005 (S.D. Ohio May 16, 2007)	Commercial
191	<i>Juniper Networks, Inc. v. Toshiba Am., Inc.</i> , No. 2:05-CV-479, 2007 WL 2021776 (E.D. Tex. July 11, 2007)	Intellectual Property
192	<i>Kamatani v. BenQ Corp.</i> , Civil Action No. 2:03-CV-437, 2005 WL 2455825 (E.D. Tex. Oct. 6, 2005)	Intellectual Property
193	<i>Katt v. Titan Acquisitions, Inc.</i> , 244 F. Supp. 2d 841 (M.D. Tenn. 2003)	Securities
194	<i>Kayongo-Male v. S.D. State Univ.</i> , No. CIV 04-4172, 2008 WL 2627699 (D.S.D. July 3, 2008)	Employment
195	<i>KCH Servs., Inc. v. Vanair, Inc.</i> , No. 05-777, 2009 WL 2216601 (W.D. Ky. July 22, 2009)	Commercial
196	<i>Keir v. UnumProvident Corp.</i> , No. 02 Civ. 8781(DLC), 2003 WL 21997747 (S.D.N.Y. Aug. 22, 2003)	Insurance
197	<i>Keithley v. Home Store.com, Inc.</i> , No. C-03-04447 SI (EDL), 2008 WL 3833384 (N.D. Cal. Aug. 12, 2008)	Intellectual Property

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198	Kimbrough v. City of Cocoa, No. 6:05-CV-471-ORL-31KRS, 2006 WL 3500873 (M.D. Fla. Dec. 4, 2006)	Tort
199	Kinnally v. Rogers Corp., No. CV-06-2704-PHX-JAT, 2008 WL 4850116 (D. Ariz. Nov. 7, 2008)	Employment
200	Kipperman v. Onex Corp., 260 F.R.D. 682 (N.D. Ga. 2009)	Bankruptcy
201	Kleiner v. Burns, No. 00-2160-JWL, 2000 WL 1909470 (D. Kan. Dec. 22, 2000)	Intellectual Property
202	Koken v. Black & Veatch Constr., Inc., 426 F.3d 39 (1st Cir. 2005)	Tort; Contract
203	Koninklike Philips Elecs. N.V. v. KXD Tech., Inc., No. 2:05-cv-1532-RLH-GWF, 2007 WL 3101248 (D. Nev. Oct. 16, 2007), <i>appeal dismissed</i> , 539 F. 3d 1039 (9th Cir. 2008)	Intellectual Property
204	Kounelis v. Sherrer, 529 F. Supp. 2d 503 (D.N.J. 2008)	Civil Rights
205	Krumwiede v. Brighton Assocs., No. 05 C 3003, 2006 WL 1308629 (N.D. Ill. May 8, 2006)	Employment
206	Kucala Enters., Ltd. v. Auto Wax Co., No. 02 C 1403, 2003 WL 21230605 (N.D. Ill. May 27), <i>adopted as modified</i> by 2003 WL 22433095, (N.D. Ill. Oct. 27, 2003)	Intellectual Property
207	Kvitka v. Puffin Co., No. 1:06-CV-0858, 2009 WL 385582 (M.D. Pa. Feb. 13, 2009)	Commercial
208	L.H. v. Schwarzenegger, No. CIV S-06-2042 LKK GGH, 2008 WL 2073958 (E.D. Cal. May 14, 2008)	Civil Rights
209	Laethem Equip. Co. v. Deere & Co., No. 05-10113, 2009 WL 3064663 (E.D. Mich. Sept. 21, 2009)	Contract
210	Landmark Legal Found. v. EPA, 272 F. Supp. 2d 70 (D.D.C. 2003)	Freedom of Information Act
211	Larson v. Bank One Corp., No. 00 C 2100, 2005 WL 4652509 (N.D. Ill. Aug. 18, 2005)	Securities
212	Lava Trading, Inc. v. Hartford Fire Ins. Co., No. 03 Civ.7037 PKCMHD, 2005 WL 459267 (S.D.N.Y. Feb. 24, 2005)	Insurance
213	Law Offices of Ben C. Martin LLP v. Sweet, No. 3-06-CV-1440-B, 2008 WL 2045477 (N.D. Tex. Mar. 19), <i>adopted</i> by 2008 WL 2130574 (N.D. Tex. Apr. 23, 2008)	Contract
214	Legacy, Inc. v. Tekserve POS, LLC, No. 05 C 5431, 2007 WL 772958 (N.D. Ill. Mar. 12, 2007)	Commercial; Employment
215	Leon v. IDX Sys. Corp., No. C03-1158P, 2004 WL 5571412 (W.D. Wash. Sept. 30, 2004), <i>aff'd</i> , 464 F.3d 951 (9th Cir. 2006)	Employment
216	Lessley v. City of Madison, No. 4:07-cv-136-DFH-WGH, 2008 WL 4977328 (S.D. Ind. Nov. 20, 2008)	Civil Rights; Tort
217	Lewis v. Ryan, 261 F.R.D. 513 (S.D. Cal. 2009)	Civil Rights
218	Lexis-Nexis v. Beer, 41 F. Supp. 2d 950 (D. Minn. 1999)	Commercial; Employment
219	Liafail, Inc. v. Learning 2000, Inc., No. C.A. 01-599, 2002 WL 31954396 (D. Del. Dec. 23, 2002)	Commercial
220	Liggett v. Rumsfeld, No. Civ. A.:04 1363(GBL), 2005 WL 2099782 (E.D. Va. Aug. 29, 2005)	Civil Rights

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221	Lighthouse Cmty. Church of God v. City of Southfield, No. 05-40220, 2006 WL 1662615 (E.D. Mich. June 12, 2006)	Constitutional
222	Lockheed Martin Corp. v. L-3 Commc'ns Corp., No. 6:05-cv-1580-Orl-31KRS, 2007 WL 3171299 (M.D. Fla. Oct. 25, 2007)	Commercial
223	Louis Vuitton Malletier v. Dooney & Bourke, Inc., No. 04 Civ. 5316 RMB MHD, 2006 WL 3476735 (S.D.N.Y. Nov. 30, 2006)	Intellectual Property
224	Lyondell-Citgo Ref., LP v. Petroleos de Venez., S.A., No. 02 Civ. 0795(CBM), 2005 WL 1026461 (S.D.N.Y. May 2, 2005)	Contract
225	Magette v. BL Dev. Corp., No. 2:07CV181-M-A, 2009 WL 4346062 (N.D. Miss. Nov. 24, 2009)	Tort
226	Mancia v. Mayflower Textile Servs. Co., No. CCB-08-273, 2009 WL 2252151 (D. Md. July 28, 2009)	Employment
227	Marcin Eng'g, LLC v. Founders at Grizzly Ranch, LLC, 219 F.R.D. 516 (D. Colo. 2003)	Commercial
228	Marketfare Annunciation, LLC v. United Fire & Cas. Ins. Co., No. 06-07232, 2007 WL 3273440 (E.D. La. Nov. 5, 2007)	Insurance
229	Mktg. Specialists, Inc. v. Bruni, 129 F.R.D. 35 (W.D.N.Y. 1989), <i>aff'd</i> , 923 F.2d 843 (2d Cir. 1990)	Contract
230	Markham v. Nat'l States Ins. Co., No. Civ.02-1606-F, 2004 WL 3019308 (W.D. Okla. Jan. 8, 2004)	Insurance
231	Martin v. Nw. Mut. Life Ins. Co., No. 804CV2328T23MAP, 2006 WL 148991 (M.D. Fla. Jan. 19, 2006)	Insurance
232	Marwaha v. SBC Global Servs., Inc., No. 05-cv-2015, 2006 WL 2882854 (N.D. Ohio Oct. 6, 2006)	Employment
233	MasterCard Int'l, Inc. v. Moulton, No. 03Civ.3613 VMMHD, 2004 WL 1393992 (S.D.N.Y. June 22, 2004)	Intellectual Property
234	Maxpower Corp. v. Abraham, 557 F. Supp. 2d 955 (W.D. Wis. 2008)	Tort
235	May v. Pilot Travel Ctrs. LLC, No. 2:05-cv-918, 2006 WL 3827511 (S.D. Ohio Dec. 28, 2006)	Employment
236	Mazloun v. D.C. Metro. Police Dep't, 530 F. Supp. 2d 282 (D.D.C. 2008)	Civil Rights
237	McDowell v. District of Columbia, 233 F.R.D. 192 (D.D.C. 2006)	Civil Rights
238	McKenna v. Nestle Purina PetCare Co., No. 2:05-cv-0976, 2007 WL 433291 (S.D. Ohio Feb. 5, 2007)	Employment
239	MDS Am., Inc. v MDS Int'l, S.A.R.I., No. 04-72353-DT, 2005 WL 3107769 (E.D. Mich. Nov. 18, 2005)	Commercial
240	MeccaTech, Inc. v. Kiser, No. 8:05CV570, 2008 WL 6010937 (D. Neb. Apr. 2, 2008), <i>adopted in part by</i> 2009 WL 1152267 (D. Neb. Apr. 23, 2009)	Commercial
241	Metro. Opera Ass'n v. Local 100, Hotel Emps. & Rest. Emps. Int'l Union, 212 F.R.D. 178 (S.D.N.Y. 2003), <i>adhered to on reconsideration by</i> No. 00 Civ. 3613(LAP), 2004 WL 1943099 (S.D.N.Y. Aug. 27, 2004)	Tort; Employment

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242	Metrokane, Inc. v. Built NY, Inc., Nos. 06 Civ. 14447(LAK)(MHD), 07 Civ.2084(LAK)(MHD), 2008 WL 4185865 (S.D.N.Y. Sept. 3, 2008)	Intellectual Property
243	MGE UPS Sys., Inc. v. Fakouri Elec. Eng'g, Inc., 422 F. Supp. 2d 724 (N.D. Tex. 2006)	Intellectual Property; Commercial
244	Mich. First Credit Union v. CUMIS Ins. Soc'y, Inc., Civ. Case No. 05-74423, 2007 WL 4098213 (E.D. Mich. Nov. 16, 2007), <i>objections overruled</i> by 2008 WL 2915077 (E.D. Mich. July 22, 2008)	Insurance
245	Miller v. IBM, No. C 02-2118 MJJ (MEJ), 2006 WL 995160 (N.D. Cal. Apr. 14, 2006)	Contract
246	Minn. Mining & Mfg. Co. v. Pribyl, 259 F.3d 587 (7th Cir. 2001)	Commercial
247	Mintel Int'l Grp., Ltd. v. Neergheen, 636 F. Supp. 2d 677 (N.D. Ill. 2009)	Commercial
248	Moore v. Am. Family Mut. Ins. Co., No. CV 06-2408-PHX-MHM, 2009 WL 886848 (D. Ariz. Mar. 31, 2009)	Insurance; Contract
249	Morris v. Union Pac. R.R., 373 F.3d 896 (8th Cir. 2004)	Tort
250	Morse Diesel Int'l, Inc. v. United States, 81 Fed. Cl. 220 (2008)	Contract
251	Mosaid Techs. Inc. v. Samsung Elecs. Co., 348 F. Supp. 2d 332 (D.N.J. 2004)	Intellectual Property
252	Mother, LLC v. L.L. Bean, Inc., No. C06-5540 JKA, 2007 WL 2302974 (W.D. Wash. Aug. 7, 2007)	Commercial
253	MPCT Solutions Corp. v. Methe, No. 99 C 3736, 1999 WL 495115 (N.D. Ill. July 2, 1999)	Commercial
254	Mullaney v. Hilton Hotels Corp., Civil No. 07-00313 ACK-LEK, 2009 WL 2006828 (D. Haw. June 30), <i>adopted as modified</i> by 2009 WL 2365561 (D. Haw. July 29, 2009)	Tort
255	Myrick v. Prime Ins. Syndicate, Inc., 395 F.3d 485 (4th Cir. 2005)	Insurance
256	N.Y. State Nat'l Org. for Women v. Cuomo, No. 93 Civ. 7146(RCL)JCF, 1998 WL 395320 (S.D.N.Y. July 14, 1998)	Civil Rights
257	N3 Oceanic, Inc. v. Shields, No. 06-1304, 2006 WL 2433731 (E.D. Pa. Aug. 21, 2006)	Commercial
258	Nat'l Ass'n of Radiation Survivors v. Turnage, 115 F.R.D. 543 (N.D. Cal. 1987)	Tort; Constitutional
259	Network Computing Servs. Corp. v. Cisco Sys., Inc., 223 F.R.D. 392 (D.S.C. 2004)	Commercial
260	New Salida Ditch Co. v. United Fire & Cas. Ins. Co., No. 08-cv-00391-JLK-KLM, 2009 WL 2399933 (D. Colo. July 31, 2009)	Insurance
261	Nieves v. Kmart Corp., No. 2005-CV-0024, 2009 WL 1605623 (D.V.I. June 8, 2009)	Tort
262	Novelty, Inc. v. Mountain View Mktg. Inc., No. 1:07-cv-01229-SEB-JMS, 2009 WL 3444591 (S.D. Ind. Oct. 21, 2009)	Intellectual Property
263	NSB U.S. Sales, Inc. v. Brill, No. 04 Civ. 9240(RCC), 2007 WL 258181 (S.D.N.Y. Jan. 26, 2007)	Contract
264	Nucor Corp. v. Bell, 251 F.R.D. 191 (D.S.C. 2008)	Tort; Intellectual Property

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265	Nursing Home Pension Fund v. Oracle Corp., 254 F.R.D. 559 (N.D. Cal. 2008)	Securities
266	O'Brien v. Ed Donnelly Enters., 575 F.3d 567 (6th Cir. 2009)	Employment
267	Ogin v. Ahmed, 563 F. Supp. 2d 539 (M.D. Pa. 2008)	Tort
268	Okoumou v. Safe Horizon, No. 03 Civ.1606 LAK HBP, 2005 WL 2431674 (S.D.N.Y. Sept. 30, 2005)	Employment
269	Oldenkamp v. United Am. Ins. Co., No. 07-CV-601-TCK-PJC, 2008 WL 4682226 (N.D. Okla. Oct. 21, 2008)	Insurance
270	Omega Patents, LLC v. Fortin Auto Radio, Inc., No. 6:05-cv-1113-Orl-22DAB, 2006 WL 2038534 (M.D. Fla. July 19, 2006)	Intellectual Property
271	Optowave Co. v. Nikitin, No. 6:05-cv-1083-Orl-22DAB, 2006 WL 3231422 (M.D. Fla. Nov. 7, 2006)	Contract
272	Orion Ethanol, Inc. v. Evans, No. 08-1180-JTM-DWB, 2009 WL 5205965 (D. Kan. Dec. 22, 2009)	Commercial
273	Outside the Box Innovations, LLC v. Travel Caddy, Inc., No. 1:05-CV-2482-ODE, 2007 WL 5155945 (N.D. Ga. Mar. 27, 2007)	Intellectual Property
274	Padgett v. City of Monte Sereno, No. C 04-03946 JW, 2007 WL 878575 (N.D. Cal. Mar. 20, 2007)	Civil Rights
275	Pandora Jewelry, LLC v. Chamilia, LLC, Civ. No. CCB-06-3041, 2008 WL 4533902 (D. Md. Sept. 30, 2008)	Commercial
276	Paramount Pictures Corp. v. Davis, 234 F.R.D. 102 (E.D. Pa. 2005)	Intellectual Property
277	Paris Bus. Prods., Inc. v. Genesis Techs., LLC, Civil No. 07-0260 (JBS), 2007 WL 3125184 (D.N.J. Oct. 24, 2007)	Commercial
278	Patmont Motor Werks, Inc. v. CSK Auto Inc., No. 3:04-CV- 0473-BES (VPC), 2006 WL 2591042 (D. Nev. Sept. 8, 2006)	Intellectual Property
279	Pennar Software Corp. v. Fortune 500 Sys. Ltd., No. 01-01734 EDL, 2001 WL 1319162 (N.D. Cal. Oct. 25, 2001)	Contract
280	Perez-Farias v. Global Horizons, Inc., No. CV-05-3061-RHW, 2007 WL 2327073 (E.D. Wash. Aug. 10, 2007)	Employment
281	Perfect Barrier LLC v. Woodsmart Solutions Inc., No. 3:07-CV-103 JVB, 2008 WL 2230192 (N.D. Ind. May 27, 2008)	Contract
282	Performance Chevrolet, Inc. v. Mkt. Scan Info. Sys., Inc., No. CV-04-0244-BLW, 2006 WL 1042359 (D. Idaho Apr. 18, 2006)	Contract
283	Permasteelisa CS Corp. v. Airolite Co., No. 2:06-cv-569, 2008 WL 2491747 (S.D. Ohio June 18, 2008)	Commercial
284	Peschel v. City of Missoula, 664 F. Supp. 2d 1137 (D. Mont. 2009)	Civil Rights
285	Petcou v. C.H. Robinson Worldwide, Inc., No. 1:06-CV-2157-HTW-GGB, 2008 WL 542684 (N.D. Ga. Feb. 25, 2008)	Employment

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286	Peterson v. Tri-County Metro. Transp. Dist., No. CV-06-1828-ST, 2008 WL 723521 (D. Or. Mar. 14, 2008)	Employment
287	Peterson v. Union Pac. R.R., No. 06-3084, 2008 WL 1930453 (C.D. Ill. May 1, 2008)	Tort
288	Phillip M. Adams & Assocs., L.L.C. v. Dell, Inc., 621 F. Supp. 2d 1173 (D. Utah 2009)	Intellectual Property
289	Phillips v. Netblue, Inc., No. C-05-4401 SC, 2007 WL 174459 (N.D. Cal. Jan. 22, 2007)	Statutory Cause of Action
290	Phillips v. Potter, No. 7-8145, 2009 WL 1362049 (W.D. Pa. May 14, 2009)	Employment
291	Phx. Four, Inc. v. Strategic Res. Corp., No. 05 Civ. 4837(HB), 2006 WL 1409413 (S.D.N.Y. May 23, 2006)	Commercial
292	Pinstripe, Inc. v. Manpower, Inc., No. 07-CV-620-GKF-PJC, 2009 WL 2252131 (N.D. Okla. July 29, 2009)	Commercial
293	Pioneer Hi-Bred Int'l, Inc. v. Monsanto Co., No. 4:97CV01609 ERW, 2001 WL 170410 (E.D. Mo. Jan. 2), <i>amended by</i> 2001 WL 34127923 (E.D. Mo. Feb. 20, 2001)	Contract
294	Plasse v. Tyco Elecs. Corp., 448 F. Supp. 2d 302 (D. Mass. 2006)	Employment
295	Plunk v. Village of Elwood, No. 07 C 88, 2009 WL 1444436 (N.D. Ill. May 20, 2009)	Civil Rights
296	PML N. Am., LLC v. Hartford Underwriters Ins. Co., No. 05-CV-70404-DT, 2006 WL 3759914 (E.D. Mich. Dec. 20, 2006)	Insurance
297	Poole <i>ex. rel.</i> Elliott v. Textron, Inc., 192 F.R.D. 494 (D. Md. 2000)	Tort
298	Preferred Care Partners Holding Corp. v. Humana, Inc., No. 08-20424-CIV, 2009 WL 982460 (S.D. Fla. Apr. 9, 2009)	Contract
299	Procter & Gamble Co. v. Haugen, 179 F.R.D. 622 (D. Utah 1998), <i>aff'd in part and rev'd in part on other grounds</i> , 222 F.3d 1262 (10th Cir. 2000)	Commercial
300	Procter & Gamble Co. v. Haugen, 427 F.3d 727 (10th Cir. 2005)	Commercial
301	Purdee v. Pilot Travel Ctrs., LLC, No. CV 407-028, 2009 WL 430401 (S.D. Ga. Feb. 19, 2009)	Employment
302	Qantum Commc'ns Corp. v. Star Broad., Inc., 473 F. Supp. 2d 1249 (S.D. Fla. 2007)	Contract
303	Qualcomm Inc. v. Broadcom Corp., No. 05cv1958-B (BLM), 2008 WL 66932 (S.D. Cal. Jan. 7), <i>vacated in part</i> , 2008 WL 638108 (S.D. Cal. Mar. 5, 2008)	Intellectual Property
304	Quinby v. WestLB AG, No. 04Civ.7406(WHP)(HBP), 2005 WL 3453908 (S.D.N.Y. Dec. 15, 2005)	Employment
305	R & R Sails, Inc. v. Ins. Co. of Pa., 251 F.R.D. 520 (S.D. Cal. 2008)	Insurance
306	R.C. Olmstead, Inc. v. CU Interface, LLC, 657 F. Supp. 2d 878 (N.D. Ohio 2009)	Commercial
307	Rafael Town Ctr. Investors, LLC v. Weitz Co., No. C 06-6633SI, 2007 WL 2261376 (N.D. Cal. Aug. 6, 2007)	Commercial

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308	Rahman v. Smith & Wollensky Rest. Grp., Inc., No. 06 CIV 6198LAKJCF, 2009 WL 773344 (S.D.N.Y. Mar. 18, 2009)	Employment
309	Realnetworks, Inc. v. DVD Copy Control Ass'n, 264 F.R.D. 517 (N.D. Cal. 2009)	Contract
310	Recinos-Recinos v. Express Forestry, Inc., Civil Action No. 05-1355, 2006 WL 2349459 (E.D. La. Aug. 11, 2006)	Employment
311	Rentfrow v. Epic Cos., No. 05-3736, 2009 WL 586279 (E.D. La. Mar. 5, 2009)	Employment
312	Residential Funding Corp. v. DeGeorge Fin. Corp., 306 F.3d 99 (2d Cir. 2002)	Contract
313	Richard Green (Fine Paintings) v. McClendon, 262 F.R.D. 284 (S.D.N.Y. 2009)	Contract
314	Ridge Chrysler Jeep, LLC v. DaimlerChrysler Servs. N. Am., LLC, No. 03 C 760, 2006 WL 2808158 (N.D. Ill. Sept. 6, 2006), <i>aff'd sub nom.</i> Ridge Chrysler Jeep, LLC v. DaimlerChrysler Fin. Servs. Ams. LLC, 516 F.3d 623 (7th Cir. 2008)	Commercial
315	Ring Plus, Inc. v. Cingular Wireless LLC, 637 F. Supp. 2d 423 (E.D. Tex. 2009)	Intellectual Property
316	Ripley v. District of Columbia, No. 06-1705 (EGS) (D.D.C. July 2, 2009)	Employment
317	Rodgers v. Lowe's Home Ctrs., Inc., No. 05 C 0502, 2007 WL 257714 (N.D. Ill. Jan. 30, 2007)	Employment
318	Rodriguez-Monguio v. Ohio State Univ., No. 2:08-cv-00139, 2009 WL 1575277 (S.D. Ohio June 3, 2009)	Employment
319	Rousseau v. Echosphere Corp., No. Civ.A. 03-1230, 2005 WL 2176839 (W.D. Pa. Aug. 30, 2005)	Employment
320	Rowe v. Albertsons, Inc., 116 F. App'x 171 (10th Cir. 2004)	Tort
321	Samsung Elecs. Co. v. Rambus, Inc., 439 F. Supp. 2d 524 (E.D. Va. 2006), <i>vacated</i> , 523 F.3d 1374 (Fed. Cir. 2008)	Intellectual Property
322	Scalera v. Electrograph Sys., Inc., 262 F.R.D. 162 (E.D.N.Y. 2009)	Employment
323	School-Link Techs., Inc. v. Applied Res., Inc., Civil Action No. 05-2088-JWL, 2007 WL 677647 (D. Kan. Feb. 28, 2007)	Contract
324	SD Prot., Inc. v. Del Rio, 587 F. Supp. 2d 429 (E.D.N.Y. 2008)	Contract
325	Select Med. Corp. v. Hardaway, No. Civ.A. 05-3341, 2006 WL 859741 (E.D. Pa. Mar. 24, 2006)	Contract
326	Sentis Grp., Inc. v. Shell Oil Co., 559 F.3d 888 (8th Cir. 2009)	Contract
327	Serra Chevrolet, Inc. v. Gen. Motors Corp., No. CV-01-VEH-2682-S (N.D. Ala. May 20, 2005), <i>aff'd in part and rev'd in part</i> , 446 F.3d 1137 (11th Cir. 2006)	Commercial
328	Serv. Emps. Int'l Union v. Rosselli, No. C 09-00404 WHA (MEJ), 2009 WL 2581320 (N.D. Cal. Aug. 20, 2009)	Employment

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329	Shank v. Kitsap County, No. C04-5843RJB, 2005 WL 2099793 (W.D. Wash. Aug. 30, 2005)	Civil Rights
330	Sheppard v. River Valley Fitness One, L.P., 203 F.R.D. 56 (D.N.H. 2001), <i>adopted in part and rejected in part</i> by No. Civ. 00-111-M, 2004 WL 102493 (D.N.H. Jan. 22, 2004), <i>aff'd in part and vacated in part</i> , 428 F.3d 1 (1st Cir. 2005)	Employment
331	Sit-up Ltd. v. IAC/Interactive Corp., No. 05 Civ. 9292(DLC), 2008 WL 463884 (S.D.N.Y. Feb. 20, 2008)	Commercial
332	Smith v. Slifer Smith & Frampton/Vail Assocs. Real Estate, LLC, No. 06-CV-02206-JLK, 2009 WL 482603 (D. Colo. Feb. 25, 2009)	Tort
333	Sonii v. Gen. Elec., No. 95 C 5370, 2003 WL 21541039 (N.D. Ill. June 11, 2003), <i>aff'd</i> , 146 F. App'x 852 (7th Cir. 2005) (per curiam)	Employment
334	SonoMedica, Inc. v. Mohler, No. 1:08-cv-230 (GBL), 2009 WL 2371507 (E.D. Va. July 28, 2009)	Commercial
335	Se. Mech. Servs., Inc. v. Brody (<i>Brody II</i>), 657 F. Supp. 2d 1293 (M.D. Fla. 2009)	Tort; Commercial
336	Se. Mech. Servs., Inc. v. Brody (<i>Brody I</i>), No. 8:08-CV-1151-T-30EAJ, 2009 WL 2242395 (M.D. Fla. July 24, 2009)	Tort; Commercial
337	S. Capitol Enters., Inc. v. Conseco Servs., L.L.C., No. 04-705-JJB-SCR, 2008 WL 4724427 (M.D. La. Oct. 24, 2008)	Commercial
338	S. New Eng. Tel. Co. v. Global NAPs, Inc., 251 F.R.D. 82 (D. Conn. 2008), <i>aff'd</i> , No. 08-4518-cv, 2010 WL 3325962 (2d Cir. Aug. 25, 2010)	Commercial
339	Spooner v. Egan, Civ. No. 08-262-P-S, 2009 WL 2175063 (D. Me. July 21), <i>adopted by</i> No. 08-262-P-S, 2009 WL 2591358 (D. Me. Aug. 19, 2009)	Intellectual Property
340	Square D Co. v. Scott Elec. Co., No. 06-00459, 2008 WL 2779067 (W.D. Pa. July 15, 2008)	Commercial
341	St. Tammany Parish Hosp. Serv. Dist. No. 1 v. Travelers Prop. Cas. Co. of Am., 250 F.R.D. 275 (E.D. La. 2008)	Insurance
342	Sterle v. Elizabeth Arden, Inc., No. 3:06 CV 01584(DJS), 2008 WL 961216 (D. Conn. Apr. 9, 2008)	Employment
343	Stevenson v. Union Pac. R.R. Co., 354 F.3d 739 (8th Cir. 2004)	Tort
344	Stratienko v. Chattanooga-Hamilton Cnty. Hosp. Auth., No. 1:07-CV-258, 2009 WL 2168717 (E.D. Tenn. July 16, 2009)	Employment
345	Streamline Capital, L.L.C. v. Hartford Cas. Ins. Co., No. 02 Civ. 8123PKCMHD, 2004 WL 2663564 (S.D.N.Y. Nov. 19, 2004)	Insurance
346	Stroupe v. Wal-Mart Stores E., LP, No. 3:07CV267, 2007 WL 3223224 (E.D. Va. Oct. 29, 2007)	Tort
347	Sue v. Milyard, No. 07-cv-01711-REB-MJW, 2009 WL 2424435 (D. Colo. Aug. 6, 2009)	Civil Rights

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348	Super Future Equities, Inc. v. Wells Fargo Bank Minn., N.A., No. 3: 06-CV-0271-B, 2008 WL 3261095 (N.D. Tex. Aug. 8, 2008)	Commercial
349	Superior Prod. P'ship v. Gordon Auto Body Parts Co., No. 2:06-cv-0916, 2009 WL 690603 (S.D. Ohio Mar. 12, 2009)	Antitrust
350	Swofford v. Eslinger, 671 F. Supp. 2d 1274 (M.D. Fla. 2009)	Constitutional
351	Tango Transp., LLC v. Transp. Int'l Pool, Inc., No. 5:08-CV-0559, 2009 WL 3254882 (W.D. La. Oct. 8, 2009)	Contract
352	Tantivy Commc'ns, Inc. v. Lucent Techs. Inc., No. Civ.A.2:04CV79 (TJW), 2005 WL 2860976 (E.D. Tex. Nov. 1, 2005)	Intellectual Property
353	Teague v. Target Corp., No. 3:06CV191, 2007 WL 1041191 (W.D.N.C. Apr. 4, 2007)	Employment
354	Tech. Recycling Corp. v. City of Taylor, 186 F. App'x 624 (6th Cir. 2006)	Civil Rights
355	Technical Sales Assocs., Inc. v. Ohio Star Forge Co., No. 07-11745, 2009 WL 728520 (E.D. Mich. Mar. 19, 2009)	Contract
356	Telecom Int'l Am., Ltd. v. AT&T Corp., 189 F.R.D. 76 (S.D.N.Y. 1999)	Contract
357	TeleQuest Int'l Corp. v. Dedicated Bus. Sys., Inc., Civ. Action No. 06-5359 (PGS), 2009 WL 690996 (D.N.J. Mar. 11, 2009)	Contract
358	Thermodyn Corp. v. 3M Co., 593 F. Supp. 2d 972 (N.D. Ohio 2008)	Commercial
359	Thompson v. U.S. Dep't of Hous. & Urban Dev., 219 F.R.D. 93 (D. Md. 2003)	Civil Rights
360	Tilton v. McGraw-Hill Cos., No. C06-0098RSL, 2007 WL 777523 (W.D. Wash. Mar. 9, 2007)	Tort
361	Toth v. Calcasieu Parish, No. 06-998, 2009 WL 528245 (W.D. La. Mar. 2, 2009)	Tort; Constitutional
362	Toussie v. County of Suffolk, No. CV 01- 6716(JS)(ARL), 2007 WL 4565160 (E.D.N.Y. Dec. 21, 2007)	Civil Rights
363	Tracy v. Fin. Ins. Mgmt. Corp., No. 1:04-CV-00619- TABDFH, 2005 WL 2100261 (S.D. Ind. Aug. 22, 2005)	Employment
364	Trask-Morton v. Motel 6 Operating L.P., 534 F.3d 672 (7th Cir. 2008)	Tort
365	Travel Sentry, Inc. v. Tropp, 669 F. Supp. 2d 279 (E.D.N.Y. 2009)	Intellectual Property
366	Treppel v. Biovail Corp., 249 F.R.D. 111 (S.D.N.Y. 2008)	Tort
367	Tri-Cnty. Motors, Inc. v. Am. Suzuki Motor Corp., 494 F. Supp. 2d 161 (E.D.N.Y. 2007), <i>aff'd</i> , 301 F. App'x 11 (2d Cir. 2008)	Contract
368	Trigon Ins. Co. v. United States, 204 F.R.D. 277 (E.D. Va. 2001)	Tax Refund Action

No.	Case	Primary Case Type
369	Triple-I Corp. v. Hudson Assocs. Consulting, Inc., No. 06-2195-EFM, 2009 WL 1210882 (D. Kan. May 1), <i>aff'd</i> , No. 06-2195-EFM, 2009 WL 2162204 (D. Kan. July 17, 2009)	Intellectual Property
370	Tse v. UBS Fin. Servs., Inc., 568 F. Supp. 2d 274 (S.D.N.Y. 2008)	Employment
371	Turner v. Resort Condos. Int'l, LLC, No. 1:03-cv-2025-DFH-WTL, 2006 WL 1990379 (S.D. Ind. July 13, 2006)	Employment
372	U & I Corp. v. Advanced Med. Design, Inc., 251 F.R.D. 667 (M.D. Fla. 2008)	Contract
373	United States <i>ex rel.</i> Koch v. Koch Indus., Inc., 197 F.R.D. 463 (N.D. Okla. 1998)	Federal Statutory Cause of Action
374	United States v. Maxxam, Inc., No. C-06-07497 CW (JCS), 2009 WL 817264 (N.D. Cal. Mar. 27, 2009)	Federal Statutory Cause of Action
375	United States v. Philip Morris USA Inc., 327 F. Supp. 2d 21 (D.D.C. 2004)	Tort
376	Univ. of Pittsburgh v. Townsend, No. 3:04-cv-291, 2007 WL 1002317 (E.D. Tenn. Mar. 30, 2007)	Intellectual Property
377	Van Asdale v. Int'l Game Tech., No. 3:04-CV-703, 2009 WL 4672727 (D. Nev. Dec. 8, 2009)	Intellectual Property
378	Wachtel v. Guardian Life Ins. Co., 239 F.R.D. 376 (D.N.J. 2006)	Employment
379	Wachtel v. Health Net, Inc., 239 F.R.D. 81 (D.N.J. 2006)	Employment
380	Wash. Alder LLC v. Weyerhaeuser Co., No. CV 03-753-PA, 2004 WL 4076674 (D. Or. May 5, 2004)	Antitrust
381	Wells Fargo Bank, N.A. v. LaSalle Bank Nat'l Ass'n, No. 3:07-cv-449, 2009 WL 2243854 (S.D. Ohio July 24, 2009)	Commercial
382	Wells v. Berger, Newmark & Fenchel, P.C., Civil Action No. 07 C 3061, 2008 WL 4365972 (N.D. Ill. Mar. 18, 2008)	Civil Rights
383	Wells v. Orange Cnty. Sch. Bd., No. 6:05-cv-479-Orl-28DAB, 2006 WL 4824479 (M.D. Fla. Nov. 7, 2006)	Employment
384	White v. Lenox Hill Hosp., No. 02CIV5749(WHP)(FM), 2005 WL 1081443 (S.D.N.Y. May 10, 2005)	Tort
385	Wiginton v. CB Richard Ellis, No. 02 C 6832, 2003 WL 22439865 (N.D. Ill. Oct. 27, 2003)	Employment
386	Wm. T. Thompson Co. v. Gen. Nutrition Corp., 593 F. Supp. 1443 (C.D. Cal. 1984)	Antitrust
387	Williams v. ACS Consultant Co., No. 06-cv-13603, 2007 WL 2822777 (E.D. Mich. Sept. 26, 2007)	Civil Rights
388	Williams v. Saint-Gobain Corp., No. 00-CV-0502E(SC), 2002 WL 1477618 (W.D.N.Y. June 28, 2002)	Employment
389	Williams v. Sprint/United Mgmt. Co., 230 F.R.D. 640 (D. Kan. 2005)	Employment
390	Wingnut Films, Ltd. v. Katja Motion Pictures Corp., No. CV 05-1516-RSWL SHX, 2007 WL 2758571 (C.D. Cal. Sept. 18, 2007)	Commercial

No.	Case	Primary Case Type
391	Wixon v. Wyndham Resort Dev. Corp., No. C 07-02361 JSW, 2009 WL 3075649 (N.D. Cal. Sept. 21, 2009)	Contract
392	Wong v. Thomas, No. 05-2588 (AET), 2008 WL 4224923 (D.N.J. Sept. 10, 2008), <i>aff'd</i> , 341 F. App'x 765 (3d Cir. 2009)	Employment
393	Wood Grp. Pressure Control, L.P. v. B & B Oilfield Servs., Inc., Civ. Action No. 06-3002, 2007 WL 1076702 (E.D. La. Apr. 9, 2007)	Commercial
394	Wood v. Sempra Energy Trading Corp., No. 3:03-CV-986 (JCH), 2005 WL 3465845 (D. Conn. Dec. 9, 2005), <i>aff'd</i> , 225 F. App'x 38 (2d Cir. 2007)	Employment
395	Woodburn Constr. Co. v. Encon Pac., LLC, No. C05-5811FDB, 2007 WL 1287845 (W.D. Wash. Apr. 30, 2007)	Commercial
396	World Courier v. Barone, No. C 06-3072 TEH, 2007 WL 1119196 (N.D. Cal. Apr. 16, 2007)	Commercial
397	Yeisley v. Pa. State Police, No. 3:CV-05-1650, 2008 WL 906465 (M.D. Pa. Mar. 31, 2008)	Civil Rights
398	z4 Techs., Inc. v. Microsoft Corp., No. 6:06-CV-142, 2006 WL 2401099 (E.D. Tex. Aug. 18, 2006), <i>aff'd</i> , 507 F.3d 1340 (Fed. Cir. 2007)	Intellectual Property
399	Zubulake v. UBS Warburg LLC (<i>Zubulake V</i>), 229 F.R.D. 422 (S.D.N.Y. 2004)	Employment
400	1100 W., LLC v. Red Spot Paint & Varnish Co., No. 1:05-cv-1670-LJM-JMS, 2009 WL 1605118 (S.D. Ind. June 5, 2009)	Environmental
401	3M Innovative Proprs. Co. v. Tomar Elecs., No. 05-756(MJD/AJB), 2006 WL 2670038 (D. Minn. Sept. 18, 2006)	Intellectual Property

APPENDIX B

OVERALL STATISTICS

Year	Cases with Adverse Jury Instruction Plaintiff Defendant of Plaintiff							
	Total Written Rulings	Total Cases	Cases with Sanction Awards	Cases with Dismissal Sanctions	Jury Sanctions	Plaintiff Sanctions	Defendant Sanctions	Percentage of Plaintiff Sanctions
2009	111	97	46	5	12	12	32	26.1%
2008	90	71	42	6	15	11	30	26.2%
2007	87	66	39	6	8	7	32	18.0%
2006	68	55	32	7	5	6	26	18.8%
2005	42	36	18	2	5	5	14	27.8%
2004	35	29	21	3	5	7	14	33.3%
2003	12	9	6	2	0	1	5	16.7%
2002	7	6	3	0	0	1	2	33.3%
2001	5	5	5	0	1	1	4	20.0%
2000	6	5	3	0	1	0	3	0.0%
1999	4	4	3	0	0	0	3	0.0%
1998	4	4	3	1	0	1	2	33.3%
1997	3	3	1	0	0	0	1	0.0%
1996	1	1	1	0	0	0	1	0.0%
1995	0	0	0	0	0	0	0	0.0%
1994	1	1	0	0	0	0	0	0.0%
1993	1	1	1	1	0	1	0	100.0%
1992	0	0	0	0	0	0	0	0.0%
1991	1	1	1	1	0	0	1	0.0%
1990	1	1	1	1	0	0	1	0.0%
1989	1	1	1	0	0	0	1	0.0%
1988	0	0	0	0	0	0	0	0.0%
1987	2	2	2	0	0	0	2	0.0%
1986	1	1	0	0	0	0	0	0.0%
1985	0	0	0	0	0	0	0	0.0%
1984	1	1	1	1	0	0	1	0.0%
1983	0	0	0	0	0	0	0	0.0%
1982	0	0	0	0	0	0	0	0.0%
1981	1	1	0	0	0	0	0	0.0%
485	401	230	36	52	53	175	23.0%	

APPENDIX C

CASES WHERE SANCTIONS WERE AWARDED

No.	Case	Basis for Sanction
1	Acorn v. County of Nassau, No. CV 05-2301, 2009 WL 605859 (E.D.N.Y. Mar. 9, 2009)	Failure to Preserve
2	Adams v. Gateway, Inc., No. 2:02-CV-106, 2006 WL 2563418 (D. Utah Mar. 6, 2006)	Failure to Produce; Delay in Production; Failure to Perform Adequate Searches
3	AdvantaCare Health Partners, LP v. Access IV, No. 03-04496, 2004 WL 1837997 (N.D. Cal. Aug. 17, 2004)	Failure to Preserve
4	Advante Int'l Corp. v. Mintel Learning Tech., No. C 05-01022 JW (RS), 2008 WL 928332 (N.D. Cal. Apr. 4, 2008)	Failure to Preserve
5	Aecon Bldgs., Inc. v. Zurich N. Am., 253 F.R.D. 655 (W.D. Wash. 2008)	Failure to Produce
6	Ajaxo Inc., v. Bank of Am. Tech. & Operations, Inc., No. CIV-S-07-0945 GEB GGH, 2008 WL 5101451 (E.D. Cal. Dec. 2, 2008)	Delay in Production; Format of Production
7	Am. Family Mut. Ins. Co. v. Roth, No. 05 C 3839, 2009 WL 982788 (N.D. Ill. Feb. 20, 2009)	Failure to Preserve
8	Am. Friends of Yeshivat Ohr Yerushalayim, Inc. v. United States, No. 04-CV-1798, 2009 WL 1617773 (E.D.N.Y. June 9, 2009)	Failure to Produce; Failure to Perform Adequate Searches
9	Ameriwood Indus. v. Liberman, No. 4:06CV524-DJS, 2007 WL 5110313 (E.D. Mo. July 3, 2007)	Failure to Preserve
10	Anderson v. Crossroads Capital Partners, LLC, No. 01-2000, 2004 WL 256512 (D. Minn. Feb. 10, 2004)	Failure to Preserve
11	APC Filtration, Inc. v. Becker, No. 07 CV 1462, 2007 WL 3046233 (N.D. Ill. Oct. 12, 2007)	Failure to Preserve
12	Appraisal Mgmt. Co. III v. FNC, Inc., No. 1:04CV1158, 2005 WL 3088561 (N.D. Ohio Nov. 17, 2005)	Failure to Produce; Delay in Production
13	Arista Records, Inc. v. Sakfield Holding Co. S.L., 314 F. Supp. 2d 27 (D.D.C. 2004)	Failure to Preserve; Failure to Produce
14	Arista Records, L.L.C. v. Tschirhart, 241 F.R.D. 462 (W.D. Tex. 2006)	Failure to Preserve
15	Arista Records LLC v. Usenet.com, Inc., 633 F. Supp. 2d 124 (S.D.N.Y. 2009)	Failure to Preserve
16	Armisted v. State Farm Mut. Auto. Ins. Co., No. 07-10259, 2009 WL 81103 (E.D. Mich. Jan. 9, 2009)	Failure to Produce
17	Arteria Prop. Pty Ltd. v. Universal Funding V.T.O., Inc., No. 05-4896 (PGS), 2008 WL 4513696 (D.N.J. Oct. 1, 2008)	Failure to Preserve
18	Atl. Recording Corp. v. Howell, No. CV-06-02076-PHX-NVW, 2008 WL 4080008 (D. Ariz. Aug. 29, 2008)	Failure to Preserve

No.	Case	Basis for Sanction
19	Attard v. City of New York, No. 05 CV 2129(JG)(RML), 2008 WL 1991107 (E.D.N.Y. May 5, 2008)	Delay in Production
20	Auto. Inspection Servs., Inc. v. Flint Auto Auction, Inc., No. 06-15100, 2007 WL 3333016 (E.D. Mich. Nov. 9, 2007)	Other
21	Autotech Techs. Ltd. P'ship v. Automationsdirect.com, Inc., No. 05 C 5488, 2008 WL 783301 (N.D. Ill. Mar. 25, 2008)	Failure to Produce
22	Babaev v. Grossman, No. CV03-5076(DLI)(WDW), 2008 WL 4185703 (E.D.N.Y. Sept. 8, 2008)	Failure to Preserve
23	Benton v. Dlorah, Inc., No. 06-CV-2488, 2007 WL 3231431 (D. Kan. Oct. 30, 2007)	Delay in Production
24	Black & Veatch Int'l Co. v. Foster Wheeler Energy Corp., 211 F.R.D. 641 (D. Kan. 2002)	Failure to Produce
25	Bd. of Regents v. BASF Corp., No. 4:04CV3356, 2007 WL 3342423 (D. Neb. Nov. 5, 2007)	Failure to Produce; Failure to Perform Adequate Searches
26	Bray & Gillespie Mgmt. LLC v. Lexington Ins. Co. (<i>Bray & Gillespie II</i>), 259 F.R.D. 591 (M.D. Fla.), <i>rejected in part</i> by No. 6:07-cv-0222-Orl-35KRS, 2009 WL 5606058 (M.D. Fla. Nov. 11, 2009), <i>and adopted in part</i> by No. 6:07-cv-0222-Orl-35KRS, 2010 WL 55595 (M.D. Fla. Jan. 5, 2010)	Delay in Production; Failure to Perform Adequate Searches; Format of Production
27	Brick v. HSBC Bank USA, No. 04-CV-0129E(F), 2004 WL 1811430 (W.D.N.Y. Aug. 11, 2004)	Failure to Produce; Delay in Production
28	Broccoli v. Echostar Commc'ns Corp., 229 F.R.D. 506 (D. Md. 2005)	Failure to Preserve
29	Bryant v. Gardner, 587 F. Supp. 2d 951 (N.D. Ill. 2008)	Failure to Preserve
30	Buskey v. Bos. Mkt. Corp., No. 04 CV 2193, 2006 WL 2527826 (E.D.N.Y. Aug. 14, 2006)	Failure to Preserve; Failure to Produce
31	Cabinetware Inc. v. Sullivan, No. Civ. S. 90-313CLKK, 1991 WL 327959 (E.D. Cal. July 15, 1991)	Failure to Preserve
32	Cache La Poudre Feeds, LLC v. Land O'Lakes, Inc., 244 F.R.D. 614 (D. Colo. 2007)	Failure to Preserve; Failure to Produce
33	Canon U.S.A., Inc. v. S.A.M., Inc., No. 07-01201, 2008 WL 2522087 (E.D. La. June 20, 2008)	Failure to Produce; Delay in Production; Failure to Perform Adequate Searches
34	Cardenas v. Dorel Juvenile Grp., Inc., No. 04-2478, 2006 WL 1537394 (D. Kan. June 1, 2006)	Failure to Perform Adequate Searches
35	Century ML-Cable Corp. v. Carrillo, 43 F. Supp. 2d 176 (D.P.R. 1998)	Failure to Preserve
36	Chevron U.S.A., Inc. v. M & M Petrol. Servs., Inc., No. SACV 07-0818 DOC (ANx), 2009 WL 2431926 (C.D. Cal. Aug. 6, 2009)	Failure to Preserve; Failure to Produce
37	Cimaglia v. Union Pac. R.R., No. 6-CV-3084, 2009 WL 87426 (C.D. Ill. Jan. 12, 2009)	Failure to Produce
38	Claredi Corp. v. Seebeyond Tech. Corp., No. 4:04CV1304 RWS, 2007 WL 735018 (E.D. Mo. Mar. 8, 2007)	Failure to Produce; Delay in Production

No.	Case	Basis for Sanction
39	Clark Constr. Grp., Inc. v. City of Memphis, 229 F.R.D. 131 (W.D. Tenn. 2005)	Failure to Preserve
40	Columbia Pictures, Inc. v. Bunnell, No. 2:06-cv-01093, 2007 WL 4877701 FMC-JCx (C.D. Cal. Dec. 13, 2007)	Failure to Preserve; Failure to Produce
41	Columbus McKinnon Corp. v. HealthNow N.Y., Inc., No. 03-CV-0831, 2006 WL 2827675 (W.D.N.Y. Sept. 29, 2006)	Failure to Produce
42	Commc'ns Ctr., Inc. v. Hewitt, No. Civ.S-03-1968 WBS KJ, 2005 WL 3277983 (E.D. Cal. Apr. 5, 2005)	Failure to Preserve; Failure to Produce
43	Computer Assocs. Int'l, Inc. v. Am. Fundware, Inc., 133 F.R.D. 166 (D. Colo. 1990)	Failure to Preserve
44	Computer Task Grp., Inc. v. Brotby, 364 F.3d 1112 (9th Cir. 2004)	Failure to Produce
45	Connor v. Sun Trust Bank, 546 F. Supp. 2d 1360 (N.D. Ga. 2008)	Failure to Preserve
46	Consol. Aluminum Corp. v. Alcoa, Inc., 244 F.R.D. 335 (M.D. La. 2006)	Failure to Preserve
47	Creative Sci. Sys., Inc. v. Forex Capital Mkts., LLC, No. C 04-03746 JF (RS), 2006 WL 870973 (N.D. Cal. Apr. 4, 2006)	Failure to Preserve
48	Crown Life Ins. Co. v. Craig, 995 F.2d 1376 (7th Cir. 1993)	Failure to Produce
49	CSI Inv. Partners II, L.P. v. Cendant Corp., 507 F. Supp. 2d 384 (S.D.N.Y. 2007), <i>aff'd</i> , 328 F. App'x 56 (2d Cir. 2009)	Failure to Preserve; Delay in Production; Misrepresenting Completeness of Production
50	Cyntegra, Inc. v. Idexx Labs., Inc., No. CV 06-4170 PSG (CTx), 2007 WL 5193736 (C.D. Cal. Sept. 21, 2007), <i>aff'd</i> , 322 F. App'x 569 (9th Cir. 2009)	Failure to Preserve
51	DaimlerChrysler Motors v. Bill Davis Racing, Inc., No. CIV.A. 03-72265, 2005 WL 3502172 (E.D. Mich. Dec. 22, 2005)	Failure to Preserve
52	Danis v. USN Commc'ns, Inc., No. 98 C 7482, 2000 WL 1694325 (N.D. Ill. Oct. 23, 2000)	Failure to Preserve
53	DeLoach v. Philip Morris Cos., 206 F.R.D. 568 (M.D.N.C. 2002)	Failure to Produce
54	Digene Corp. v. Third Wave Techs., Inc., No. 07-C-22-C, 2007 WL 4939048 (W.D. Wis. Oct. 24, 2007)	Failure to Produce
55	DirecTV, Inc. v. Borow, No. 03 C 2581, 2005 WL 43261 (N.D. Ill. Jan. 6, 2005)	Failure to Preserve
56	Doe v. Norwalk Cmty. Coll., 248 F.R.D. 372 (D. Conn. 2007)	Failure to Preserve
57	Dong Ah Tire & Rubber Co. v. Glasforms, Inc., No. C 06-3359 JF (RS), 2008 WL 4786671 (N.D. Cal. Oct. 29, 2008)	Failure to Preserve
58	Dowling v. United States, No. 2000-CV-0049, 2008 WL 4534174 (D.V.I. Oct. 6, 2008)	Failure to Preserve
59	Durdin v. Kuryakyn Holdings, Inc., No. 06-C-0039-C, 2006 WL 6040466 (W.D. Wis. Nov. 7, 2006)	Failure to Preserve
60	Dziadkiewicz v. Blue Cross & Blue Shield of R.I., No. C.A.96-275S, 2004 WL 2418308 (D.R.I. Oct. 13, 2004, Oct. 21, 2004)	Delay in Production

No.	Case	Basis for Sanction
61	E*Trade Sec. LLC v. Deutsche Bank AG, 230 F.R.D. 582 (D. Minn. 2005)	Failure to Preserve; Failure to Perform Adequate Searches
62	Easton Sports, Inc. v. Warrior LaCrosse, Inc., No. 05-72031, 2006 WL 2811261 (E.D. Mich. Sept. 28, 2006)	Failure to Preserve
63	Edelen v. Campbell Soup Co., Civil Action No. 1:08-cv-00299-JOF-LTW, 2009 WL 4798117 (N.D. Ga. Dec. 8, 2009)	Failure to Perform Adequate Searches
64	Elion v. Jackson, No. 05-0992 (PLF), 2006 WL 2583694 (D.D.C. Sept. 8, 2006)	Failure to Produce
65	Fendi Adele S.R.L. v. Filene's Basement, Inc., No. 06 Civ. 244, 2009 WL 855955 (S.D.N.Y. Mar. 24, 2009)	Delay in Production
66	Ferrero v. Henderson, 341 F. Supp. 2d 873 (S.D. Ohio 2004), <i>withdrawn in part</i> , No. 3:00CV00462, 2005 WL 1802134 (S.D. Ohio July 28, 2005)	Failure to Produce; Failure to Perform Adequate Searches
67	Pharmacy Records v. Nassar (<i>Pharmacy Records I</i>), 248 F.R.D. 507 (E.D. Mich. 2008), <i>aff'd</i> , 379 F. App'x 522 (6th Cir. 2010)	Failure to Preserve
68	Finley v. Hartford Life & Accident Ins. Co., 249 F.R.D. 329 (N.D. Cal. 2008)	Failure to Produce
69	Fleming v. City of New York, No. 01 Civ. 8885, 2007 WL 4302501 (S.D.N.Y. Dec. 7, 2007)	Failure to Produce
70	Fox v. Riverdeep, Inc., No. 07-CV-13622, 2008 WL 5244297 (E.D. Mich. Dec. 16, 2008)	Failure to Preserve
71	Gamby v. First Nat'l Bank of Omaha, No. 06-11020, 2009 WL 127782 (E.D. Mich. Jan. 20), <i>objection denied</i> , 2009 WL 963116 (E.D. Mich. Apr. 8, 2009)	Failure to Produce; Delay in Production; Failure to Perform Adequate Searches
72	Gates Rubber Co. v. Bando Chem. Indus., 167 F.R.D. 90 (D. Colo. 1996)	Failure to Preserve
73	GE Harris Ry. Elecs., L.L.C. v. Westinghouse Air Brake Co., No. 99-070-GMS, 2004 WL 5702740 (D. Del. Mar. 29, 2004)	Failure to Preserve
74	Giant Screen Sports LLC v. Sky High Entm't, No. 05 C 7184, 2007 WL 627607 (N.D. Ill. Feb. 27, 2007)	Failure to Preserve; Failure to Produce; Failure to Perform Adequate Searches
75	Goodman v. Praxair Servs., Inc., 632 F. Supp. 2d 494 (D. Md. 2009)	Failure to Preserve
76	Google Inc. v. Am. Blind & Wallpaper Factory, Inc., No. C 03-5340 JF (RS), 2007 WL 1848665 (N.D. Cal. June 27, 2007)	Failure to Produce; Failure to Perform Adequate Searches
77	Grange Mut. Cas. Co. v. Mack, 270 F. App'x 372 (6th Cir. 2008) (<i>per curiam</i>)	Failure to Preserve; Failure to Produce
78	Grantley Patent Holdings, Ltd. v. Clear Channel Commc'ns, Inc., Civil Action No. 9:06CV259, slip op. (E.D. Tex. Aug. 14, 2007)	Failure to Produce
79	Great Am. Ins. Co. of N.Y. v. Lowry Dev., LLC, Civil Action Nos. 106CV097 LTS-RHW, 1:06CV412 LTS-RHW, 2007 WL 4268776 (S.D. Miss. Nov. 30, 2007)	Failure to Preserve
80	Grochocinski v. Schlossberg, 402 B.R. 825 (N.D. Ill. 2009)	Failure to Preserve

No.	Case	Basis for Sanction
81	GTFM, Inc. v. Wal-Mart Stores, Inc., No. 98 CIV. 7724 RPP, 2000 WL 335558, (S.D.N.Y. Mar. 30, 2000)	Failure to Produce; Delay in Production
82	Gucci Am., Inc., v. Gucci, No. 07 Civ. 6820(RMB)(JCF), 2009 WL 440463 (S.D.N.Y. Feb. 20, 2009)	Failure to Produce
83	Gutman v. Klein, No. 03 CV 1570(BMC)(RML), 2008 WL 4682208 (E.D.N.Y. Oct. 15), <i>adopted</i> by No. 03 Civ. 1570(BMC), 2008 WL 5084182 (E.D.N.Y. Dec. 2, 2008)	Failure to Preserve
84	Hahn v. Minn. Beef Indus., Inc., No. 00-2282 RHKSRN, 2002 WL 32667146 (D. Minn. Mar. 8, 2002)	Failure to Produce; Delay in Production
85	Hanni v. Am. Airlines, Inc., No. C-08-00732 CW (EDL), 2009 WL 1505286 (N.D. Cal. May 27, 2009)	Failure to Produce
86	Hewlett v. Davis, Civil Action No. 86-3708, 1987 WL 12298 (E.D. Pa. June 3, 1987), <i>aff'd in part and rev'd in part</i> , 844 F.2d 109 (3d Cir. 1988)	Failure to Preserve; Failure to Produce
87	Hous. Rights Ctr. v. Sterling, No. CV 03-859DSF, 2005 WL 3320739 (C.D. Cal. Mar. 2, 2005)	Failure to Preserve; Delay in Production; Failure to Perform Adequate Searches
88	Ill. Tool Works, Inc. v. Metro Mark Prods., Ltd., 43 F. Supp. 2d 951 (N.D. Ill. 1999)	Failure to Preserve; Delay in Production
89	Oscher v. Solomon Tropp Law Grp., P.A. (<i>In re</i> Atl. Int'l Mortgage Co.), 352 B.R. 503 (Bankr. M.D. Fla. 2006)	Failure to Produce; Delay in Production
90	<i>In re</i> Cheyenne Software, Inc. Sec. Litig., No. CV-94-2771(NG), 1997 WL 714891 (E.D.N.Y. Aug. 18, 1997)	Failure to Produce
91	Cohen Steel Supply, Inc. v. Fagnant (<i>In re</i> Fagnant), Nos. 03-10496-JMD, 03-1348-JMD, 2004 WL 2944126 (Bankr. D.N.H. Dec. 13, 2004)	Delay in Production
92	<i>In re</i> Fannie Mae Sec. Litig., 552 F.3d 814 (D.C. Cir. 2009)	Failure to Produce; Delay in Production
93	Hawaiian Airlines, Inc. v. Mesa Air Grp., Inc. (<i>In re</i> Hawaiian Airlines, Inc.), Bankr. No. 03-00817, Adv. No. 06-90026, 2007 WL 3172642 (Bankr. D. Haw. Oct. 30, 2007)	Failure to Preserve
94	<i>In re</i> Kmart Corp., 371 B.R. 823 (Bankr. N.D. Ill. 2007)	Failure to Preserve; Failure to Produce; Failure to Perform Adequate Searches
95	United States v. Krause (<i>In re</i> Krause), 367 B.R. 740 (Bankr. D. Kan. 2007), <i>aff'd</i> , Nos. 08-1132, 08-1136, 2009 WL 5064348 (D. Kan. Dec. 16, 2009)	Failure to Preserve
96	<i>In re</i> LTV Steel Co., 307 B.R. 37 (Bankr. N.D. Ohio 2004)	Failure to Produce; Delay in Production
97	<i>In re</i> Napster, Inc. Copyright Litig., 462 F. Supp. 2d 1060 (N.D. Cal. 2006)	Failure to Preserve
98	<i>In re</i> Nat'l Century Fin. Enters., Inc. Fin. Inv. Litig., No. 2:03-MD-1565, 2009 WL 87618 (S.D. Ohio Jan. 8, 2009)	Failure to Produce; Delay in Production

No.	Case	Basis for Sanction
99	<i>In re</i> NTL, Inc. Sec. Litig., 244 F.R.D. 179 (S.D.N.Y. 2007), <i>aff'd sub nom.</i> Gordon Partners v. Blumenthal, No. 02 Civ. 7377(LAK)(AJP), 2007 WL 1518632 (S.D.N.Y. May 17, 2007)	Failure to Preserve; Failure to Produce
100	<i>In re</i> Old Banc One S'holders Sec. Litig., No. 00 C 2100, 2005 WL 3372783 (N.D. Ill. Dec. 8, 2005)	Failure to Preserve
101	<i>In re</i> Quintus Corp., 353 B.R. 77 (Bankr. D. Del. 2006), <i>aff'd in part</i> , Nos. 01-501, 01-502, 01-503, Adv. No. 04-53074, Civ. No. 06-769 SLR, 2007 WL 4233665 (D. Del. Nov. 29, 2007)	Failure to Preserve
102	<i>In re</i> Rosenthal, Civil Action No. H-04-186, 2008 WL 983702 (S.D. Tex. Mar. 28, 2008)	Failure to Preserve
103	<i>In re</i> Sept. 11th Liab. Ins. Coverage Cases, 243 F.R.D. 114 (S.D.N.Y. 2007)	Failure to Produce; Delay in Production
104	<i>In re</i> Telxon Corp. Sec. Litig., Nos. 5:98CV2876, 1:01CV1078, 2004 WL 3192729 (N.D. Ohio July 16, 2004)	Failure to Preserve; Failure to Produce; Delay in Production; Failure to Perform Adequate Searches; Misrepresenting Completeness of Production
105	<i>Innis Arden Golf Club v. Pitney Bowes, Inc.</i> , 257 F.R.D. 334 (D. Conn. 2009)	Failure to Preserve
106	<i>Inst. for Motivational Living, Inc. v. Doulos Inst. for Strategic Consulting, Inc.</i> , 110 F. App'x 283 (3d Cir. 2004)	Failure to Preserve
107	<i>Invision Media Commc'ns, Inc. v. Fed. Ins. Co.</i> , No. 02Civ.5461(NRB)(KNF), 2004 WL 396037 (S.D.N.Y. Mar. 2, 2004)	Failure to Produce
108	<i>Jacobson v. Starbucks Coffee Co.</i> , No. 05-1338-JTM, 2006 WL 3146349 (D. Kan. Oct. 31, 2006)	Failure to Produce; Failure to Perform Adequate Searches
109	<i>Johnson v. Wells Fargo Home Mortg., Inc.</i> , No. 3:05-CV-0321-RAM, 2008 WL 2142219 (D. Nev. May 16, 2008)	Failure to Preserve
110	<i>Jones v. Hawley</i> , 255 F.R.D. 51 (D.D.C. 2009)	Failure to Preserve
111	<i>JPMorgan Chase Bank, N.A. v. Neovi, Inc.</i> , No. 2:06-CV-0095, 2007 WL 1514005 (S.D. Ohio May 16, 2007)	Failure to Produce; Delay in Production; Failure to Perform Adequate Searches
112	<i>Juniper Networks, Inc. v. Toshiba Am., Inc.</i> , No. 2:05-CV-479, 2007 WL 2021776 (E.D. Tex. July 11, 2007)	Failure to Produce; Misrepresenting Completeness of Production
113	<i>Kamatani v. BenQ Corp.</i> , Civil Action No. 2:03-CV-437, 2005 WL 2455825 (E.D. Tex. Oct. 6, 2005)	Failure to Produce; Failure to Perform Adequate Searches
114	<i>KCH Servs., Inc. v. Vanaire, Inc.</i> , No. 05-777, 2009 WL 2216601 (W.D. Ky. July 22, 2009)	Failure to Preserve
115	<i>Keithley v. Home Store.com, Inc.</i> , No. C-03-04447SI (EDL), 2008 WL 3833384 (N.D. Cal. Aug. 12, 2008)	Failure to Preserve; Delay in Production; Failure to Perform Adequate Searches
116	<i>Kipperman v. Onex Corp.</i> , 260 F.R.D. 682 (N.D. Ga. 2009)	Failure to Produce; Delay in Production; Failure to Perform Adequate Searches

No.	Case	Basis for Sanction
117	Koninklike Philips Elecs. N.V. v. KXD Tech., Inc., No. 2:05-cv-1532-RLH-GWF, 2007 WL 3101248 (D. Nev. Oct. 16, 2007), <i>appeal dismissed</i> , 539 F.3d 1039 (9th Cir. 2008)	Failure to Preserve; Failure to Produce
118	Kounelis v. Sherrer, 529 F. Supp. 2d 503 (D.N.J. 2008)	Failure to Preserve
119	Krumwiede v. Brighton Assocs., No. 05 C 3003, 2006 WL 1308629 (N.D. Ill. May 8, 2006)	Failure to Preserve
120	Kucala Enters., Ltd. v. Auto Wax Co., No. 02 C 1403, 2003 WL 21230605 (N.D. Ill. May 27), <i>adopted as modified by</i> 2003 WL 22433095 (N.D. Ill. Oct. 27, 2003)	Failure to Preserve
121	Kvitka v. Puffin Co., No. 1:06-CV-0858, 2009 WL 385582 (M.D. Pa. Feb. 13, 2009)	Failure to Preserve
122	L.H. v. Schwarzenegger, No. CIV S-06-2042 LKK GGH, 2008 WL 2073958 (E.D. Cal. May 14, 2008)	Delay in Production; Format of Production
123	Landmark Legal Found. v. EPA, 272 F. Supp. 2d 70 (D.D.C. 2003)	Failure to Preserve
124	Larson v. Bank One Corp., No. 00 C 2100, 2005 WL 4652509 (N.D. Ill. Aug. 18, 2005)	Failure to Preserve
125	Lava Trading, Inc. v. Hartford Fire Ins. Co., No. 03 Civ. 7037 PKC, 2005 WL 459267 (S.D.N.Y. Feb. 24, 2005)	Delay in Production
126	Legacy, Inc. v. Tekserve POS, LLC, No. 05 C 5431, 2007 WL 772958 (N.D. Ill. Mar. 12, 2007)	Failure to Preserve
127	Leon v. IDX Sys. Corp., No. C03-1158P, 2004 WL 5571412 (W.D. Wash. Sept. 30, 2004), <i>aff'd in part and rev'd in part</i> , 464 F.3d 951 (9th Cir. 2006)	Failure to Preserve
128	Lessley v. City of Madison, No. 4:07-cv-136-DFH-WGH, 2008 WL 4977328 (S.D. Ind. Nov. 20, 2008)	Failure to Produce
129	Lewis v. Ryan, 261 F.R.D. 513 (S.D. Cal. 2009)	Failure to Preserve; Failure to Produce
130	Lexis-Nexis v. Beer, 41 F. Supp. 2d 950 (D. Minn. 1999)	Failure to Produce
131	Louis Vuitton Malletier v. Dooney & Bourke, Inc., No. 04 Civ. 5316 RMB MHD, 2006 WL 3476735 (S.D.N.Y. Nov. 30, 2006)	Failure to Produce; Failure to Perform Adequate Searches
132	Lyondell-Citgo Ref., LP v. Petroleos de Venez., S.A., No. 02 Civ. 0795 (CBM), 2005 WL 1026461 (S.D.N.Y. May 2, 2005)	Failure to Produce
133	Marcin Eng'g, LLC v. Founders at Grizzly Ranch, LLC, 219 F.R.D. 516 (D. Colo. 2003)	Failure to Produce
134	Mktg. Specialists, Inc. v. Bruni, 129 F.R.D. 35 (W.D.N.Y. 1989), <i>aff'd</i> , 923 F.2d 843 (2d Cir. 1990)	Failure to Produce
135	Martin v. Nw. Mut. Life Ins. Co., No. 8:04CV2328T23MAP, 2006 WL 148991 (M.D. Fla. Jan. 19, 2006)	Failure to Produce
136	MasterCard Int'l, Inc. v. Moulton, No. 03Civ.3613 VMMHD, 2004 WL 1393992 (S.D.N.Y. June 22, 2004)	Failure to Preserve

No.	Case	Basis for Sanction
137	May v. Pilot Travel Ctrs. LLC, No. 2:05-cv-918, 2006 WL 3827511 (S.D. Ohio Dec. 28, 2006)	Failure to Preserve; Failure to Produce; Delay in Production
138	Mazloum v. D.C. Metro. Police Dep't, 530 F. Supp. 2d 282 (D.D.C. 2008)	Failure to Preserve
139	McDowell v. District of Columbia, 233 F.R.D. 192 (D.D.C. 2006)	Failure to Produce; Delay in Production; Format of Production; Failure to Perform Adequate Searches
140	MeccaTech, Inc. v. Kiser, No. 8:05CV570, 2008 WL 6010937 (D. Neb. Apr. 2, 2008), <i>adopted in part</i> by 2009 WL 1152267 (D. Neb. Apr. 23, 2009)	Failure to Preserve
141	Metro. Opera Ass'n v. Local 100, Hotel Emps. & Rest. Emps. Int'l Union, 212 F.R.D. 178 (S.D.N.Y. 2003), <i>adhered to on reconsideration</i> by No. 00 Civ. 3613(LAP), 2004 WL 1943099 (S.D.N.Y. Aug. 27, 2004)	Failure to Preserve; Failure to Produce; Failure to Perform Adequate Searches
142	Metrokane, Inc. v. Built NY, Inc., No. 06 Civ. 14447(LAK)(MHD), 2008 WL 4185865 (S.D.N.Y. Sept. 3, 2008)	Failure to Preserve; Failure to Produce
143	Minn. Mining & Mfg. Co. v. Pribyl, 259 F.3d 587 (7th Cir. 2001)	Failure to Preserve
144	Mosaïd Techs. Inc. v. Samsung Elecs. Co., 348 F. Supp. 2d 332 (D.N.J. 2004)	Failure to Preserve
145	Mother, LLC. v. L.L. Bean, Inc., No. C06-5540 JKA, 2007 WL 2302974 (W.D. Wash. Aug. 7, 2007)	Failure to Produce
146	MPCT Solutions Corp. v. Methe, No. 99 C 3736, 1999 WL 495115 (N.D. Ill. July 2, 1999)	Failure to Preserve
147	Mullaney v. Hilton Hotels Corp., Civil No. 07-00313 ACK-LEK, 2009 WL 2006828 (D. Haw. June 30), <i>adopted as modified</i> by 2009 WL 2365561 (D. Haw. July 29, 2009)	Failure to Preserve
148	Myrick v. Prime Ins. Syndicate, Inc., 395 F.3d 485 (4th Cir. 2005)	Failure to Produce
149	Nat'l Ass'n of Radiation Survivors v. Turnage, 115 F.R.D. 543 (N.D. Cal. 1987)	Failure to Preserve; Failure to Produce; Failure to Perform Adequate Searches
150	Network Computing Servs. Corp. v. Cisco Sys., Inc., 223 F.R.D. 392 (D.S.C. 2004)	Failure to Produce; Delay in Production; Misrepresenting Completeness of Production
151	New Salida Ditch Co. v. United Fire & Cas. Ins. Co., No. 08-cv-00391-JLK-KLM, 2009 WL 2399933 (D. Colo. July 31, 2009)	Delay in Production
152	Novelty, Inc. v. Mountain View Mktg. Inc., No. 1:07-cv-01229-SEB-JMS, 2009 WL 3444591 (S.D. Ind. Oct. 21, 2009)	Failure to Produce; Delay in Production; Failure to Perform Adequate Searches
153	NSB U.S. Sales, Inc. v. Brill, No. 04 Civ. 9240(RCC), 2007 WL 258181 (S.D.N.Y. Jan. 26, 2007)	Failure to Produce
154	Nucor Corp. v. Bell, 251 F.R.D. 191 (D.S.C. 2008)	Failure to Preserve
155	Nursing Home Pension Fund v. Oracle Corp., 254 F.R.D. 559 (N.D. Cal. 2008)	Failure to Preserve

No.	Case	Basis for Sanction
156	Ogin v. Ahmed, 563 F. Supp. 2d 539 (M.D. Pa. 2008)	Failure to Preserve
157	Omega Patents, LLC v. Fortin Auto Radio, Inc., No. 6:05-cv-1113-Orl-22DAB, 2006 WL 2038534 (M.D. Fla. July 19, 2006)	Delay in Production
158	Optowave Co. v. Nikitin, No. 6:05-cv-1083-Orl-22DAB, 2006 WL 3231422 (M.D. Fla. Nov. 7, 2006)	Failure to Preserve
159	Padgett v. City of Monte Sereno, No. C 04-03946 JW, 2007 WL 878575 (N.D. Cal. Mar. 20, 2007)	Failure to Preserve
160	Pandora Jewelry, LLC v. Chamilia, LLC, Civ. No. CCB-06-3041, 2008 WL 4533902 (D. Md. Sept. 30, 2008)	Failure to Preserve; Failure to Produce
161	Paramount Pictures Corp. v. Davis, 234 F.R.D. 102 (E.D. Pa. 2005)	Failure to Preserve
162	Paris Bus. Prods., Inc. v. Genisis Techs., LLC, Civil No. 07-0260 (JBS), 2007 WL 3125184 (D.N.J. Oct. 24, 2007)	Failure to Preserve
163	Pennar Software Corp. v. Fortune 500 Sys. Ltd., No. 01-01734 EDL, 2001 WL 1319162 (N.D. Cal. Oct. 25, 2001)	Failure to Preserve; Failure to Produce
164	Perez-Farias v. Global Horizons, Inc., No. CV-05-3061 RHW, 2007 WL 2327073 (E.D. Wash. Aug. 10, 2007)	Failure to Produce; Failure to Preserve; Delay in Production
165	Peschel v. City of Missoula, 664 F. Supp. 2d 1137 (D. Mont. 2009)	Failure to Preserve
166	Phx. Four, Inc. v. Strategic Res. Corp., No. 05 Civ. 4837 (HB), 2006 WL 1409413 (S.D.N.Y. May 23, 2006)	Delay in Production
167	Pinstripe, Inc. v. Manpower, Inc., No. 07-CV-620-GKF-PJC, 2009 WL 2252131 (N.D. Okla. July 29, 2009)	Failure to Preserve
168	Pioneer Hi-Bred Int'l, Inc. v. Monsanto Co., No. 4:97CV01609 ERW, 2001 WL 170410 (E.D. Mo. Jan. 2), <i>amended by</i> 2001 WL 34127923 (E.D. Mo. Feb. 20, 2001)	Failure to Produce; Delay in Production; Failure to Perform Adequate Searches; Misrepresenting Completeness of Production
169	Plasse v. Tyco Elecs. Corp., 448 F. Supp. 2d 302 (D. Mass. 2006)	Failure to Preserve
170	Plunk v. Village of Elwood, No. 07 C 88, 2009 WL 1444436 (N.D. Ill. May 20, 2009)	Failure to Preserve
171	PML N. Am., LLC v. Hartford Underwriters Ins. Co., No. 05-CV-70404-DT, 2006 WL 3759914 (E.D. Mich. Dec. 20, 2006)	Failure to Preserve; Failure to Produce
172	Poole <i>ex. rel.</i> Elliott v. Textron, Inc., 192 F.R.D. 494 (D. Md. 2000)	Failure to Produce; Failure to Perform Adequate Searches
173	Preferred Care Partners Holding Corp. v. Humana, Inc., No. 08-20424-CIV, 2009 WL 982460 (S.D. Fla. Apr. 9, 2009)	Failure to Preserve; Delay in Production; Failure to Perform Adequate Searches
174	Procter & Gamble Co. v. Haugen, 179 F.R.D. 622 (D. Utah 1998), <i>aff'd in part, rev'd in part on other grounds</i> , 222 F.3d 1262 (10th Cir. 2000)	Failure to Preserve
175	Qantum Commc'ns Corp. v. Star Broad., Inc., 473 F. Supp. 2d 1249 (S.D. Fla. 2007)	Failure to Produce

No.	Case	Basis for Sanction
176	Qualcomm Inc. v. Broadcom Corp., No. 05cv1958-B (BLM), 2008 WL 66932 (S.D. Cal. Jan. 7), <i>vacated in part</i> , 2008 WL 638108 (S.D. Cal. Mar. 5, 2008)	Failure to Produce
177	R & R Sails Inc. v. Ins. Co. of Pa., 251 F.R.D. 520 (S.D. Cal. 2008)	Delay in Production
178	Rafael Town Ctr. Investors, LLC v. Weitz Co., No. C 06-6633SI, 2007 WL 2261376 (N.D. Cal. Aug. 6, 2007)	Failure to Produce
179	Realnetworks, Inc. v. DVD Copy Control Ass'n, 264 F.R.D. 517 (N.D. Cal. 2009)	Failure to Preserve
180	Recinos-Recinos v. Express Forestry, Inc., Civil Action No. 05-1355, 2006 WL 2349459 (E.D. La. Aug. 11, 2006)	Delay in Production; Failure to Produce
181	Richard Green (Fine Paintings) v. McClendon, 262 F.R.D. 284 (S.D.N.Y. 2009)	Failure to Preserve
182	Ridge Chrysler Jeep, LLC v. DaimlerChrysler Servs. N. Am., LLC, No. 03 C 760, 2006 WL 2808158 (N.D. Ill. Sept. 6, 2006), <i>aff'd sub nom.</i> Ridge Chrysler Jeep, LLC v. DaimlerChrysler Fin. Servs. Ams. LLC, 516 F. 3d 623 (7th Cir. 2008)	Failure to Preserve; Failure to Produce; Delay in Production; Misrepresenting Completeness of Production
183	Ripley v. District of Columbia, No. 06-1705 (D.D.C. July 2, 2009)	Failure to Preserve; Failure to Produce; Delay in Production; Failure to Perform Adequate Searches
184	Rodgers v. Lowe's Home Ctrs., Inc., No. 05 C 0502, 2007 WL 257714 (N.D. Ill. Jan. 30, 2007)	Failure to Preserve
185	Rousseau v. Echosphere Corp., No. Civ.A. 03-1230, 2005 WL 2176839 (W.D. Pa. Aug. 30, 2005)	Delay in Production
186	School-Link Techs., Inc. v. Applied Res., Inc., Civil Action No. 05-2088-JWL, 2007 WL 677647 (D. Kan. Feb. 28, 2007)	Failure to Perform Adequate Searches
187	SD Prot., Inc. v. Del Rio, 587 F. Supp. 2d 429 (E.D.N.Y. 2008)	Failure to Produce
188	Shank v. Kitsap County, No. C04-5843RJB, 2005 WL 2099793 (W.D. Wash. Aug. 30, 2005)	Delay in Production
189	Sheppard v. River Valley Fitness One, L.P., 203 F.R.D. 56 (D.N.H. 2001), <i>adopted in part and rejected in part</i> by No. Civ. 00-111-M, 2004 WL 102493 (D.N.H. Jan. 22, 2004), <i>aff'd in part, vacated in part</i> , 428 F.3d 1 (1st Cir. 2005)	Failure to Produce
190	Smith v. Slifer Smith & Frampton/Vail Assocs. Real Estate, LLC, No. 06-CV-02206-JLK, 2009 WL 482603 (D. Colo. Feb. 25, 2009)	Failure to Preserve
191	Sonii v. Gen. Elec., No. 95 C 5370, 2003 WL 21541039 (N.D. Ill. June 11, 2003), <i>aff'd</i> , 146 F. App'x 852 (7th Cir. 2005) (per curiam)	Failure to Preserve; Failure to Produce
192	SonoMedica, Inc. v. Mohler, No. 1:08-cv-230 (GBL), 2009 WL 2371507 (E.D. Va. July 28, 2009)	Failure to Preserve; Failure to Produce
193	Se. Mech. Servs., Inc. v. Brody (<i>Brody II</i>), 657 F. Supp. 2d 1293 (M.D. Fla. 2009)	Failure to Preserve

No.	Case	Basis for Sanction
194	S. Capitol Enters., Inc. v. Conseco Servs., L.L.C., No. 04-705-JJB-SCR, 2008 WL 4724427 (M.D. La. Oct. 24, 2008)	Delay in Production
195	S. New Eng. Tel. Co. v. Global NAPs, Inc., 251 F.R.D. 82 (D. Conn. 2008), <i>aff'd</i> , No. 08-4518-cv, 2010 WL 3325962 (2d Cir. Aug. 25, 2010)	Failure to Produce; Failure to Preserve
196	Spooner v. Egan, Civ. No. 08-262-P-S, 2009 WL 2175063 (D. Me. July 21), <i>adopted by</i> No. 08-262-P-S, 2009 WL 2591358 (D. Me. Aug. 19, 2009)	Failure to Produce; Delay in Production
197	Sterle v. Elizabeth Arden, Inc., No. 3:06 CV 01584(DJS), 2008 WL 961216 (D. Conn. Apr. 9, 2008)	Failure to Produce; Delay in Production
198	Stevenson v. Union Pac. R.R. Co., 354 F.3d 739 (8th Cir. 2004)	Failure to Preserve
199	Stratienko v. Chattanooga-Hamilton Cnty. Hosp. Auth., No. 1:07-CV-258, 2009 WL 2168717 (E.D. Tenn. July 16, 2009)	Failure to Preserve; Failure to Produce; Delay in Production
200	Streamline Capital, L.L.C. v. Hartford Cas. Ins. Co., No. 02 Civ. 8123PKCMHD, 2004 WL 2663564 (S.D.N.Y. Nov. 19, 2004)	Failure to Preserve
201	Super Future Equities, Inc. v. Wells Fargo Bank Minn., N.A., No. 3: 06-CV-0271-B, 2008 WL 3261095 (N.D. Tex. Aug. 8, 2008)	Failure to Preserve; Failure to Produce
202	Swofford v. Eslinger, 671 F. Supp. 2d 1274 (M.D. Fla. 2009)	Failure to Preserve
203	Tango Transp., LLC v. Transp. Int'l Pool, Inc., No. 5:08-CV-0559, 2009 WL 3254882 (W.D. La. Oct. 8, 2009)	Delay in Production
204	Teague v. Target Corp., No. 3:06CV191, 2007 WL 1041191 (W.D.N.C. Apr. 4, 2007)	Failure to Preserve
205	Tech. Recycling Corp. v. City of Taylor, 186 F. App'x 624 (6th Cir. 2006)	Failure to Produce
206	Technical Sales Assocs., Inc. v. Ohio Star Forge Co., No. 07-11745, 2009 WL 728520 (E.D. Mich. Mar. 19, 2009)	Failure to Preserve
207	TeleQuest Int'l Corp. v. Dedicated Bus. Sys., Inc., Civ. Action No. 06-5359 (PGS), 2009 WL 690996 (D.N.J. Mar. 11, 2009)	Failure to Preserve
208	Thompson v. U.S. Dep't of Hous. & Urban Dev., 219 F.R.D. 93 (D. Md. 2003)	Delay in Production; Failure to Preserve
209	Tilton v. McGraw-Hill Cos., No. C06-0098RSL, 2007 WL 777523 (W.D. Wash. Mar. 9, 2007)	Failure to Preserve
210	Toussie v. County of Suffolk, No. CV 01-6716(JS)(ARL), 2007 WL 4565160 (E.D.N.Y. Dec. 21, 2007)	Delay in Production
211	Tracy v. Fin. Ins. Mgmt. Corp., No. 1:04-CV-00619-TABDFH, 2005 WL 2100261 (S.D. Ind. Aug. 22, 2005)	Delay in Production
212	Travel Sentry, Inc. v. Tropp, 669 F. Supp. 2d 279 (E.D.N.Y. 2009)	Failure to Produce
213	Treppel v. Biovail Corp., 249 F.R.D. 111 (S.D.N.Y. 2008)	Failure to Preserve
214	Trigon Ins. Co. v. United States, 204 F.R.D. 277 (E.D. Va. 2001)	Failure to Preserve

No.	Case	Basis for Sanction
215	Tse v. UBS Fin. Servs., Inc., 568 F. Supp. 2d 274 (S.D.N.Y. 2008)	Failure to Produce; Delay in Production
216	U & I Corp. v. Advanced Med. Design, Inc., 251 F.R.D. 667 (M.D. Fla. 2008)	Failure to Produce; Delay in Production
217	United States <i>ex rel.</i> Koch v. Koch Indus., Inc., 197 F.R.D. 463 (N.D. Okla. 1998)	Failure to Preserve
218	United States v. Philip Morris USA Inc., 327 F. Supp. 2d 21 (D.D.C. 2004)	Failure to Preserve
219	Wachtel v. Guardian Life Ins. Co., 239 F.R.D. 376 (D.N.J. 2006)	Failure to Preserve; Failure to Perform Adequate Searches
220	Wachtel v. Health Net, Inc., 239 F.R.D. 81 (D.N.J. 2006)	Failure to Preserve; Failure to Produce; Failure to Perform Adequate Searches; Misrepresenting Completeness of Production; Delay in Production
221	Wells v. Berger, Newmark & Fenchel, P.C., Civil Action No. 07 C 3061, 2008 WL 4365972 (N.D. Ill. Mar. 18, 2008)	Failure to Preserve
222	Wells v. Orange County Sch. Bd., No. 6:05cv479ORL28DAB, 2006 WL 4824479 (M.D. Fla. Nov. 7, 2006)	Failure to Perform Adequate Searches; Delay in Production
223	Wm. T. Thompson Co. v. Gen. Nutrition Corp., 593 F. Supp. 1443 (C.D. Cal. 1984)	Failure to Preserve
224	Wingnut Films, Ltd. v. Katja Motion Pictures Corp., No. CV 05-1516-RSWL SHX, 2007 WL 2758571 (C.D. Cal. Sept. 18, 2007)	Failure to Preserve; Failure to Produce; Delay in Production; Failure to Perform Adequate Searches
225	Wixon v. Wyndham Resort Dev. Corp., No. C 07-02361 JSW, 2009 WL 3075649 (N.D. Cal. Sept. 21, 2009)	Failure to Produce
226	World Courier v. Barone, No. C 06-3072 TEH, 2007 WL 1119196 (N.D. Cal. Apr. 16, 2007)	Failure to Preserve
227	z4 Techs., Inc. v. Microsoft Corp., No. 6:06-CV-142, 2006 WL 2401099 (E.D. Tex. Aug. 18, 2006), <i>aff'd</i> , 507 F.3d 1340 (Fed. Cir. 2007)	Failure to Produce; Misrepresenting Completeness of Production; Delay in Production
228	Zubulake v. UBS Warburg LLC (<i>Zubulake V</i>), 229 F.R.D. 422 (S.D.N.Y. 2004)	Failure to Preserve; Delay in Production
229	1100 W., LLC v. Red Spot Paint & Varnish Co., No. 1:05-cv-1670-LJM-JMS, 2009 WL 1605118 (S.D. Ind. June 5, 2009)	Failure to Produce; Failure to Perform Adequate Searches; Delay in Production
230	3M Innovative Prods. Co. v. Tomar Elecs., Civ. No. 05-756(MJD/AJB), 2006 WL 2670038 (D. Minn. Sept. 18, 2006)	Failure to Preserve; Failure to Produce; Failure to Perform Adequate Searches

APPENDIX D

MONETARY SANCTIONS¹⁷⁰

No.	Case	Amount
1	Grange Mut. Cas. Co. v. Mack, 270 F. App'x 372 (6th Cir. 2008) (per curiam)	\$8,830,983.69
2	Qualcomm Inc. v. Broadcom Corp., No. 05cv1958-B (BLM), 2008 WL 66932 (S.D. Cal. Jan. 7), <i>vacated in part</i> , 2008 WL 638108 (S.D. Cal. Mar. 5, 2008)	\$8,568,633.24
3	Pioneer Hi-Bred Int'l, Inc. v. Monsanto Co., No. 4:97CV01609 ERW, 2001 WL 170410 (E.D. Mo. Jan. 2), <i>amended by</i> 2001 WL 34127923 (E.D. Mo. Feb. 20, 2001)	\$8,211,287.50
4	Wachtel v. Health Net, Inc., 239 F.R.D. 81 (D.N.J. 2006); Wachtel v. Health Net, Inc., Civ. Nos. 01-4183, 03-1801, 2007 WL 1791553 (D.N.J. June 19, 2007)	\$6,723,883.22
5	S. New Eng. Tel. Co. v. Global NAPs, Inc., 251 F.R.D. 82 (D. Conn. 2008), <i>aff'd</i> , No. 08-4518-cv, 2010 WL 3325962 (2d Cir. Aug. 25, 2010)	\$5,893,541.86
6	Hawaiian Airlines, Inc. v. Mesa Air Grp. (<i>In re</i> Hawaiian Airlines, Inc.), Bankr. No. 03-00817, Adv. No. 06-90026, 2007 WL 3172642 (Bankr. D. Haw. Oct. 30, 2007); Hawaiian Airlines, Inc. v. Mesa Air Grp. (<i>In re</i> Hawaiian Airlines, Inc.), Bankr. No. 03-00817, Adv. No. 06-90026, 2008 WL 185649 (Bankr. D. Haw. Jan. 22, 2008)	\$3,929,532.21
7	United States v. Philip Morris USA Inc., 327 F. Supp. 2d 21 (D.D.C. 2004).	\$2,755,027.48
8	z4 Techs., Inc. v. Microsoft Corp., No. 6:06-CV-142, 2006 WL 2401099 (E.D. Tex. Aug. 18, 2006), <i>aff'd</i> , 507 F.3d 1340 (Fed. Cir. 2007)	\$2,300,000.00
9	Kipperman v. Onex Corp., 260 F.R.D. 682 (N.D. Ga. 2009)	\$1,022,700.00
10	CSI Inv. Partners II, L.P. v. Cendant Corp., 507 F. Supp. 2d 384 (S.D.N.Y. 2007), <i>aff'd</i> , 328 F. App'x 56 (2d Cir. 2009)	\$720,000.00
11	Mosaid Techs. Inc. v. Samsung Elecs. Co., 348 F. Supp. 2d 332 (D.N.J. 2004)	\$566,839.97
12	<i>In re</i> Sept. 11th Liab. Ins. Coverage Cases, 243 F.R.D. 114 (S.D.N.Y. 2007)	\$500,000.00
13	Kamatani v. BenQ Corp., Civil Action No. Civ.A. 2:03-CV-437, 2005 WL 2455825 (E.D. Tex. Oct. 4, 2005)	\$500,000.00
14	Keithley v. Home Store.com, Inc., No. C-03-04447 SI (EDL), 2008 WL 3833384 (N.D. Cal. Aug. 12, 2008)	\$405,798.00
15	Gutman v. Klein, No. 03 CV1570(BMC)(RML), 2008 WL 4682208 (E.D.N.Y. Oct. 15), <i>adopted by</i> No. 03 Civ. 1570(BMC), 2008 WL 5084182 (E.D.N.Y. Dec. 2, 2008)	\$287,729.72
16	Tech. Recycling Corp. v. City of Taylor, 186 F. App'x 624 (6th Cir. 2006)	\$223,805.00
17	Trigon Ins. Co. v. United States, 204 F.R.D. 277 (E.D. Va. 2001); Trigon Ins. Co. v. United States, 234 F. Supp. 2d 592 (E.D. Va. 2002)	\$179,725.70
18	Ferrero v. Henderson, 341 F. Supp. 2d 873 (S.D. Ohio 2004), <i>withdrawn in part</i> , No. 3:00CV00462, 2005 WL 1802134 (S.D. Ohio July 28, 2005)	\$168,175.00

170. Where more than one case is cited, the court awarded the monetary sanction in the subsequent case.

No.	Case	Amount
19	Brick v. HSBC Bank USA, No. 04-CV-0129E(F), 2004 WL 1811430 (W.D.N.Y. Aug. 11, 2004)	\$147,635.74
20	Commc'ns Ctr., Inc. v. Hewitt, No. Civ.S-03-1968 WBS KJ, 2005 WL 3277983 (E.D. Cal. Apr. 5, 2005)	\$145,811.75
21	PML N. Am., LLC v. Hartford Underwriters Ins. Co., No. 05-CV-70404-DT, 2006 WL 3759914 (E.D. Mich. Dec. 20, 2006); PML N. Am., LLC v. Hartford Underwriters Ins. Co., No. 05-CV-70404-DT, 2007 WL 925627 (E.D. Mich. Mar. 28, 2007)	\$134,373.00
22	Wingnut Films, Ltd. v. Katja Motion Pictures Corp., No. CV 05-1516-RSWL SHX, 2007 WL 2758571 (C.D. Cal. Sept. 18, 2007)	\$125,000.00
23	Nat'l Ass'n of Radiation Survivors v. Turnage, 115 F.R.D. 543 (N.D. Cal. 1987)	\$120,000.00
24	Krumwiede v. Brighton Assocs., No. 05 C 3003, 2006 WL 1308629 (N.D. Ill. May 8, 2006); Krumwiede v. Brighton Assocs., No. 05C3003, 2006 WL 2349985 (N.D. Ill. Aug. 9, 2006)	\$111,348.30
25	GTFM, Inc. v. Wal-Mart Stores, Inc., No. 98 CIV. 7724 RPP, 2000 WL 335558 (S.D.N.Y. Mar. 30, 2000); GTFM, Inc. v. Wal-Mart Stores, Inc., No. 98CIV.7724(RPP), 2000 WL 1693615 (S.D.N.Y. Nov. 9, 2000)	\$109,753.81
26	SonoMedica, Inc. v. Mohler, No. 1:08-cv-230 (GBL), 2009 WL 2371507 (E.D. Va. July 28, 2009)	\$108,212.15
27	Advante Int'l Corp. v. Mintel Learning Tech., No. C 05-01022 JW (RS), 2008 WL 928332 (N.D. Cal. Apr. 4, 2008)	\$105,000.00
28	APC Filtration, Inc. v. Becker, No. 07 C 1462, 2007 WL 3046233 (N.D. Ill. Oct. 12, 2007); APC Filtration, Inc. v. Becker, No. 07 C 1452, 2007 WL 4569721 (N.D. Ill. Dec. 21, 2007)	\$99,462.40
29	Kucala Enters., Ltd. v. Auto Wax Co., No. 02 C 1403, 2003 WL 22433095 (N.D. Ill. Oct. 27, 2003); Kucala Enters., Ltd. v. Auto Wax Co., No. 02 C 1403, 2004 WL 742252 (N.D. Ill. Apr. 6, 2004)	\$93,125.74
30	Phx. Four, Inc. v. Strategic Res. Corp., No. 05 Civ. 4837(HB), 2006 WL 1409413 (S.D.N.Y. May 23, 2006); Phx. Four, Inc. v. Strategic Res. Corp., No. 05 Civ. 4837(HB), 2006 WL 2135798 (S.D.N.Y. Aug. 1, 2006)	\$75,161.82
31	Claredi Corp. v. Seebeyond Tech. Corp., No. 4:04CV1304 RWS, 2007 WL 735018 (E.D. Mo. Mar. 8, 2007)	\$73,943.75
32	McDowell v. District of Columbia, 233 F.R.D. 192 (D.D.C. 2006); McDowell v. District of Columbia, Civ. Action No. 02-1110 (RWR/JMF), 2006 WL 1933809 (D.D.C. July 11, 2006)	\$72,910.12
33	Leon v. IDX Sys. Corp., No. C03-1158P, 2004 WL 5571412 (W.D. Wash. Sept. 30, 2004), <i>aff'd</i> , 464 F.3d 951 (9th Cir. 2006)	\$65,000.00
34	NSB U.S. Sales, Inc. v. Brill, No. 04 Civ. 9240(RCC), 2007 WL 258181 (S.D.N.Y. Jan. 26, 2007)	\$56,667.00
35	Plasse v. Tyco Elecs. Corp., 448 F. Supp. 2d 302 (D. Mass. 2006); Plasse v. Tyco Elecs. Corp., No. Civ.A.04 30056 MAP, 2006 WL 3445610 (D. Mass. Nov. 8, 2006)	\$55,472.32
36	Digene Corp. v. Third Wave Techs., Inc., No. 07-C-22-C, 2007 WL 4939048 (W.D. Wis. Oct. 24, 2007)	\$50,000.00
37	Perez-Farias v. Global Horizons, Inc., No. CV-05-3061-RHW, 2007 WL 2327073 (E.D. Wash. Aug. 10, 2007)	\$45,500.00
38	Atl. Recording Corp. v. Howell, No. CV-06-02076-PHX-NVW, 2008 WL 4080008 (D. Ariz. Aug. 29, 2008)	\$40,500.00
39	R & R Sails, Inc. v. Ins. Co. of Pa., 251 F.R.D. 520 (S.D. Cal. 2008)	\$39,914.68
40	Poole <i>ex rel.</i> Elliott v. Textron, Inc., 192 F.R.D. 494 (D. Md. 2000)	\$37,258.39

No.	Case	Amount
41	Recinos-Recinos v. Express Forestry, Inc., Civil Action No. 05-1355, 2006 WL 2349459 (E.D. La. Aug. 11, 2006)	\$36,391.24
42	Chevron U.S.A., Inc. v. M & M Petrol. Servs., Inc., No. SACV 07-0818 DOC (ANx), 2009 WL 2431926 (C.D. Cal. Aug. 6, 2009)	\$25,000.00
43	AdvantaCare Health Partners, LP v. Access IV, No. C 03-04496 JF, 2004 WL 1837997 (N.D. Cal. Aug. 17, 2004)	\$20,000.00
44	<i>In re</i> Rosenthal, Civil Action No. H-04-186, 2008 WL 983702 (S.D. Tex. Mar. 28, 2008)	\$18,900.00
45	Technical Sales Assocs., Inc. v. Ohio Star Forge Co., No. 07-11745, 2009 WL 728520 (E.D. Mich. Mar. 19, 2009)	\$17,786.25
46	Tse v. UBS Fin. Servs., Inc., 568 F. Supp. 2d 274 (S.D.N.Y. 2008)	\$16,666.75
47	Broccoli v. Echostar Commc'ns Corp., 229 F.R.D. 506 (D. Md. 2005)	\$16,097.00
48	Google Inc. v. Am. Blind & Wallpaper Factory, Inc., No. C 03-5340 JF (RS), 2007 WL 1848665 (N.D. Cal. June 27, 2007)	\$15,000.00
49	<i>In re</i> Cheyenne Software, Inc., Sec. Litig., No. CV-94-2771(NG), 1997 WL 714891 (E.D.N.Y. Aug. 18, 1997)	\$15,000.00
50	Hanni v. Am. Airlines, Inc., No. C-08-00732 CW (EDL), 2009 WL 1505286 (N.D. Cal. May 27, 2009)	\$13,117.00
51	Tango Transp., LLC v. Transp. Int'l Pool, Inc., No. 5:08-CV-0559, 2009 WL 3254882 (W.D. La. Oct. 8, 2009)	\$12,870.00
52	Creative Sci. Sys., Inc. v. Forex Capital Mkts., LLC, No. C 04-03746 JF (RS), 2006 WL 870973 (N.D. Cal. Apr. 4, 2006)	\$12,175.00
53	Grantley Patent Holdings, Ltd. v. Clear Channel Commc'ns, Inc., Civil Action No. 9:06CV259 (E.D. Tex. Aug. 14, 2007)	\$10,000.00
54	Danis v. USN Commc'ns, Inc., No. 98 C 7482, 2000 WL 1694325 (N.D. Ill. Oct. 23, 2000)	\$10,000.00
55	E*Trade Sec. LLC v. Deutsche Bank AG, 230 F.R.D. 582 (D. Minn. 2005)	\$10,000.00
56	Cimaglia v. Union Pac. R.R. Co., No. 06-CV-3084, 2009 WL 87426 (C.D. Ill. Jan. 12, 2009)	\$10,000.00
57	Travel Sentry, Inc. v. Tropp, 669 F. Supp. 2d 279 (E.D.N.Y. 2009)	\$10,000.00
58	Procter & Gamble Co. v. Haugen, 179 F.R.D. 622 (D. Utah 1998), <i>aff'd in part and rev'd in part on other grounds</i> , 222 F.3d 1262 (10th Cir. 2000)	\$10,000.00
59	Finley v. Hartford Life & Accident Ins. Co., 249 F.R.D. 329 (N.D. Cal. 2008)	\$9,000.00
60	Attard v. City of New York, No. 05 CV 2129(JG)(RML), 2008 WL 1991107 (E.D.N.Y. May 5, 2008)	\$5,000.00
61	Babaev v. Grossman, No. CV03-5076 (DLI)(WDW), 2008 WL 4185703 (E.D.N.Y. Sept. 8, 2008)	\$5,000.00
62	Cache La Poudre Feeds, LLC v. Land O'Lakes, Inc., 244 F.R.D. 614 (D. Colo. 2007)	\$5,000.00
63	Ajaxo Inc. v. Bank of Am. Tech. & Operations, Inc., No. CIV-S-07-0945 GEB GGH, 2008 WL 5101451 (E.D. Cal. Dec. 2, 2008)	\$4,170.00
64	Hewlett v. Davis, Civil Action No. 86-3708, 1987 WL 12298 (E.D. Pa. June 3, 1987), <i>aff'd in part and rev'd in part</i> , 844 F.2d 109 (3d Cir. 1988)	\$2,950.00
65	Pinstripe, Inc. v. Manpower, Inc., No. 07-CV-620-GKF-PJC, 2009 WL 2252131 (N.D. Okla. July 29, 2009)	\$2,500.00
66	Cohen Steel Supply, Inc. v. Fagnant (<i>In re</i> Fagnant), Nos. 03-10496-JMD, 03-1348-JMD, 2004 WL 2944126 (Bankr. D.N.H. Dec. 13, 2004)	\$1,817.80
67	Omega Patents, LLC v. Fortin Auto Radio, Inc., No. 6:05-cv-1113-Orl-22DAB, 2006 WL 2038534 (M.D. Fla. July 19, 2006)	\$1,500.00

No.	Case	Amount
68	Bray & Gillespie Mgmt. LLC v. Lexington Ins. Co. (<i>Bray & Gillespie II</i>), 259 F.R.D. 591 (M.D. Fla.), <i>rejected in part</i> by No. 6:07-cv-0222-Orl-35KRS, 2009 WL 5606058 (M.D. Fla. Nov. 11, 2009), <i>and adopted in part</i> by No. 6:07-cv-0222-Orl-35KRS, 2010 WL 55595 (M.D. Fla. Jan. 5, 2010)	\$1,205.65
69	Benton v. Dlorah, Inc., No. 06-CV-2488, 2007 WL 3231431 (D. Kan. Oct. 30, 2007)	\$1,000.00
70	Lessley v. City of Madison, No. 4:07-cv-136-DFH-WGH, 2008 WL 4977328 (S.D. Ind. Nov. 20, 2008)	\$1,000.00
71	SD Prot., Inc. v. Del Rio, 587 F. Supp. 2d 429 (E.D.N.Y. 2008)	\$1,000.00
72	Stratienko v. Chattanooga-Hamilton Cnty. Hosp. Auth., No. 1:07-CV-258, 2009 WL 2168717 (E.D. Tenn. July 16, 2009)	\$1,000.00
73	Lighthouse Cmty. Church of God v. City of Southfield, No. 05-40220, 2006 WL 1662615 (E.D. Mich. June 12, 2006)	\$750.00
74	Wells v. Orange Cnty. Sch. Bd., No. 6:05-cv-479-Orl-28DAB, 2006 WL 4824479 (M.D. Fla. Nov. 7, 2006)	\$750.00
75	Rousseau v. Echosphere Corp., No. Civ.A. 03-1230, 2005 WL 2176839 (W.D. Pa. Aug. 30, 2005)	\$696.74
76	Sheppard v. River Valley Fitness One, L.P., 203 F.R.D. 56 (D.N.H. 2001), <i>adopted in part and rejected in part</i> by No. Civ. 00-111-M, 2004 WL 102493 (D.N.H. Jan. 22, 2004), <i>aff'd in part and vacated in part</i> , 428 F.3d 1 (1st Cir. 2005)	\$500.00
77	Crown Life Ins. Co. v. Craig, 995 F.2d 1376 (7th Cir. 1993)	\$250.00