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Watch Out for Auto-Delete: Delaware Court of Chancery Sanctions Former Meta Officer for Deleting Personal Emails


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In a recent decision, *In re Facebook Inc. Derivative Litigation*,[1] Vice Chancellor J. Travis Laster of the Delaware Court of Chancery imposed litigation sanctions on a former officer and director of Meta Platforms, Inc. ("Meta") for deleting personal emails potentially relevant to claims concerning unauthorized third-party access of Facebook users' private information. The Court also determined that an outside director's six-month auto-delete policy on his personal emails was potentially sanctionable but for his lack of real-time involvement in the relevant events. The decision is a good reminder for companies, and their officers and directors, to take document preservation obligations seriously once potential litigation is reasonably anticipated, including identifying and suspending any customary deletion practices.

Background

The dispute in *In re Facebook* arose in derivative litigation based on data analytics company Cambridge Analytica's harvesting of private information from more than 50 million Facebook users in the 2010s. After the *New York Times* first broke news of the conduct in 2018, Meta (f/k/a Facebook Inc.) issued a document preservation notice (known as a "legal hold") to its officers and directors, including Sheryl Sandberg (then Chief Operating Officer), instructing recipients that they (1) "have a legal obligation to preserve and not destroy any pertinent evidence in [their] possession that could be relevant to this matter[]" and (2) "do not delete or destroy" documents.[2] Soon thereafter, plaintiffs (Meta stockholders) brought a derivative suit, alleging that the company's officers and directors (including Sandberg) breached their fiduciary duties by allowing the company to improperly sell user data and remove disclosures from privacy settings.[3] Jeffrey Zients, who served on the Special Committee that authorized the settlement with the Federal Trade Commission, joined the Facebook Inc. board shortly after the suit was filed. After he joined the board, Facebook Inc. added Zients to the legal hold that Sandberg received.[4]

The matter proceeded to discovery, during which defendants produced a voluminous amount of documents. In 2024, plaintiffs asked defendants about the preservation of electronically stored information ("ESI"), including emails. In response to plaintiffs' interrogatories, defendants disclosed that Sandberg used a personal Gmail account to discuss issues potentially pertinent to the matter and regularly deleted emails over 30-days old. Further, defendants could identify "no specific date" upon which the practice ceased.[5] Similarly, Zients's personal emails were subject to a six-month automatic deletion protocol during his service on the board of directors. Defendants revealed that no one collected emails from Zients's personal account, and thus, the emails were irreparably lost. After these revelations regarding Sandberg and Zients's failure to properly preserve ESI, the defendants "investigated whether the data could be obtained" from other sources and "examined the ESI that remained in an effort to draw inferences about what the lost ESI might have contained."[6]

Unable to confirm recovery of all of Sandberg and Zients's deleted emails, however, plaintiffs filed a motion asking the Court to impose curative sanctions against Sandberg and Zients for spoliation under Rule 37(e) of the Court of Chancery Rules. Specifically, plaintiffs requested that the Court: (1) increase Sandberg and Zients's "burden of proof for affirmative defenses[,]" from a "preponderance of the evidence" standard to "clear and convincing evidence"; (2) prevent them from testifying about information received from their personal email accounts as part of any defense in their case-in-chief at trial; (3) bar them from moving for summary judgment; and (4) award Plaintiffs incurred expenses in connection with the spoliation motion.[7]

The Court of Chancery's Decision

Vice Chancellor Laster granted plaintiffs' motion in part. To impose spoliation sanctions for failing to preserve ESI, the moving party must show that: (1) "the responding party had a duty to preserve the ESI"; (2) "the ESI is lost"; (3) "the loss is attributable to the responding party's failure to take reasonable steps to preserve the ESI"; and (4) the "requesting party suffered prejudice."[8]

As to the first factor, no party disputed that Sandberg and Zients were subject to a duty to preserve. As the Court explained, a party has an obligation to "preserve potentially relevant evidence as soon as the party either actually anticipates litigation or reasonably should have anticipated litigation."[9] "An organization's decision to circulate a [legal] hold[,]" as the company did in 2018 before the derivative suit was filed, is a "strong indication that a duty to preserve evidence exists, because it shows that the organization subjectively anticipates litigation."[10] Although "[a] party is not obligated to preserve every shred of paper, every e-mail or electronic document[,]" the duty to preserve extends to "personal emails" to the extent they are potentially relevant or reasonably likely to be requested during discovery.[11]

Likewise, the Court had no trouble concluding that the second factor—"the ESI is lost"—was met. On that point, the Court rejected defendants' argument that the messages from their personal accounts were not "lost" because they would neither have been responsive nor relevant. Although relevance may be considered in assessing "prejudice," the sole criterion here is whether all emails in question could be retrieved from other sources. Here, it was not possible to recover all of the deleted emails.

Nor, in the Court's view, did defendants take "reasonable steps" to identify, collect and preserve the ESI in question.[12] It is not enough, the Court explained, to circulate a legal hold. A company must also make sure recipients understand the legal hold's contents and abide by it. Notably, that includes "disabl[ing] auto-delete functions that would otherwise destroy emails or texts[]" and backing up information from personal devices before deleting the information.[13] In this case, the failure to identify, collect, and preserve Sandberg's and Zients's personal emails was particularly inexcusable, in the Court's estimation, because the legal hold specifically referenced "all correspondence (such as email, instant messages, Skype messages, WhatsApp messages, FB Messages, text messages, FB Group posts, and letters)."[14]

Finally, as to the fourth factor regarding "prejudice," the Court made a distinction between Sandberg and Zients. As to Sandberg, the Court held that plaintiffs met their burden of establishing the potential relevance of Sandberg's personal emails, and that plaintiffs were thus prejudiced by their deletion, as the subset of emails retrieved showed that she routinely conducted business via her Gmail account. The Court further noted that Sandberg admitted to selectively deleting emails, suggesting that her most sensitive exchanges were likely irretrievably lost. By contrast, Zients was an outside director who joined the board after the relevant time period. Although Zients also used his personal email account for company-related business and "put himself at risk of sanctions by maintaining the auto-delete feature on his personal email account," plaintiffs failed to demonstrate that any relevant evidence was lost from Zients's deletion practices.[15] Consequently, the Court imposed sanctions as to Sandberg—increasing her burden of proof on any affirmative defense to the "clear and convincing evidence" standard, and

requiring her to pay plaintiffs' expenses in seeking sanctions—but declined to do so as to Zients.[16]

Takeaways

In re Facebook is a good reminder for companies—and their officers, directors, and employees—to take affirmative steps to preserve all potentially relevant documents, wherever they may be found, when potential litigation arises. Issuing a legal hold, while a best practice, is not sufficient by itself.[17] To minimize the risk of sanctions, the company and legal hold recipients must take affirmative steps to abide by the notice, including ensuring that ordinary data deletion practices (whether discretionary, as in Sandberg's case, or automatic, as in Zients's) are suspended. That applies not only to company-wide repositories of responsive documents and official methods of communication (such as company-issued email accounts), but also to personal email accounts, text messages, and other electronic forms of communication, to the extent that they are used to conduct relevant business.

Here, the company took proper action by sending a broad legal hold to knowledgeable officers and directors the moment litigation became reasonably anticipated, after publication of the 2018 *New York Times* article. It likewise acted appropriately by sharing the legal hold with a new director who joined soon thereafter. However, the company (guided by its legal advisors) should have gone a step further by thoroughly investigating the methods of electronic communication utilized by each recipient and ensuring that any deletion policies or practices applied to those communications were promptly suspended. For their part, Sandberg and Zients should have proactively sought to comply with the legal hold, including by putting a stop to their personal deletion practices and inquiring with counsel if they had any questions.

In re Facebook, it should be noted, does not pass judgment on an officer or director's ability to delete emails or personal data as a general matter. Unless otherwise proscribed by law, regulation, or company policy, there is nothing inherently problematic with the six-month auto-delete function utilized by Zients, for example. *In re Facebook*, however, stands for the proposition that continuing to delete data once litigation is reasonably anticipated, can have potentially serious repercussions down the road if litigation proceeds. Although the sanctions imposed on Sandberg were relatively mild (essentially, an increased burden of proof on any defenses she might raise, plus the other side's expenses), courts are typically afforded wide discretion in imposing sanctions, including dismissal and issuance of a default judgment in the most serious cases.[18] The best way to avoid such outcomes is a proactive approach to document preservation, in close consultation with counsel, when the prospect of litigation arises.

[1] Consolidated C.A. No. 2018-0307-JTL, 2025 WL 262194 (Del. Ch. Jan. 21, 2025).

[2] *Id.* at *3 (internal quotations and citations omitted). On March 22, 2018, Sandberg received a legal hold about documents pertaining to developer access to user data or Cambridge Analytica.

[3] In 2011, the Federal Trade Commission brought an action against Facebook Inc., alleging that it permitted third parties to operate applications on Facebook that allowed third parties to receive Facebook users' personal information. In 2012, Facebook Inc. settled the Federal Trade Commission charges by entering into a Consent Decree; the Consent Decree required Facebook Inc. to, among other things, obtain consumers' consent before enacting changes that supersede their privacy preferences.

[4] *See In re Facebook Inc. Deriv. Litig.*, Consolidated C.A. No. 2018-0307-JTL, at 2 (Del. Ch. Oct. 3, 2024) (Trans. ID 74655892).

[5] *In re Facebook Inc. Deriv. Litig.*, Consolidated C.A. No. 2018-0307-JTL, 2025 WL 262194, at *4-*5 (Del. Ch. Jan. 21, 2025) (internal quotations and citations omitted).

[6] *Id.* at *5.

[7] *Id.* at *12.

[8] *Id.* at *6 (citing *Goldstein v. Denner*, 310 A.3d 548, 571 (Del. Ch. 2024)).

[9] *Id.* (internal quotations and citations omitted).

[10] *Id.* at *7 (internal quotations and citations omitted).

[11] *Id.* at *6-*7 (internal quotations and citations omitted).

[12] *Id.* at *9.

[13] *Id.* at *8 (internal quotations and citations omitted).

[14] *Id.* at *9 (internal quotations and citations omitted).

[15] *Id.* at *11.

[16] *Id.* at *12-*13.

[17] *See Goldstein*, 310 A.3d at 576-77; *see also*, *e.g.*, *DR Distribs., LLC v. 21 Century Smoking, Inc.*, 513 F. Supp. 3d 839, 933 (N.D. Ill. 2021) ("The issuance of a litigation hold does not end counsel's duty in preserving ESI."); *Lokai Holdings LLC v. Twin Tiger USA LLC*, No. 15cv9363 (ALC) (DF), 2018 WL 1512055, at *11 (S.D.N.Y. 2018) (noting that defense counsel was "obligated to 'oversee compliance with [a] litigation hold, monitoring the party's efforts to retain and produce the relevant documents,' and to 'become fully familiar with [their] client's document retention policies, as well as the client's data retention architecture[.]'" (internal citation omitted)); *Youngevity Int'l v. Smith*, No. 3:16-cv-704-BTM-JLB, 2020 WL 7048687, at *3 (S.D. Cal. 2020) ("Here, the defendants' [legal] hold, consisting of a conference call informing unidentified defendants to preserve ESI relevant to litigation, is insufficient because after it occurred[,] the Relevant Defendants took no affirmative steps to preserve text messages, resulting in their deletion.").

[18] *See* Ct. Ch. R. 37(b) (allowing a court to impose multiple sanctions to cure prejudice, including entering default judgment); *see also*, *e.g.*, *In re Rinehardt*, 575 A.2d 1079, 1083 (Del. 1990) ("When a party announces that it will persist in its refusal to make discovery, . . . then a trial judge should not hesitate to impose an array of sanctions[,] including, if necessary, the ultimate sanction of a default judgment.").