

Corporate & Financial Weekly Digest

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Failure to Issue Written Litigation Hold Did Not Warrant Sanctions

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A company's failure to implement a written litigation hold and its subsequent failure to produce certain documents responsive to an adversary's discovery request did not require finding the company liable for spoliation of evidence, a New York federal court recently ruled.

Steuben Foods, Inc. sued Country Gourmet Foods, LLC, and Campbell Soup Company, asserting claims for breach of contract and various torts. At the time it first anticipated litigation, Steuben did not issue a written litigation hold requiring documents to be retained, but instead relied on oral directions to employees to instruct them to retain relevant documents. During the course of the litigation, Campbell served document requests and obtained—from sources other than Steuben—relevant documents that Steuben had possessed but did not produce. Campbell sought sanctions, arguing that Steuben was liable for spoliation of evidence for failing to issue a timely written litigation hold letter requiring all relevant documents to be retained and preserved.

The U.S. District Court for the Western District of New York disagreed, finding that there was no evidence that Steuben destroyed relevant documents and that the relevant documents were not sufficiently critical to Campbell's defense. Refusing to follow Judge Scheindlin's finding in *Pension Committee v. Banc of America Securities, LLC* that the failure to issue a written litigation hold constituted gross negligence, the court held that a party's failure to implement a written litigation hold, by itself, did not give rise to a rebuttable presumption of spoliation. In particular, the court distinguished *Pension Committee* on the grounds that the "paucity" of documents produced in that case led to the conclusion that documents must have been lost or destroyed. Moreover, the court noted that oral instructions to preserve documents may be more appropriate in relatively smaller companies, such as Steuben, which only had 400 employees. (*Steuben Foods, Inc. v. Country Gourmet Foods, LLC*, No. 08-CV-561S(F), 2011 WL 1549450 (W.D.N.Y. April 21, 2011))