

Case Summary

Capricorn Power Company v. Siemens Westinghouse Power Corporation

220 F.R.D 429 (W.D.Pa. 2004)

Court Denies Preservation Order Without Proof of Destruction or Degradation of Evidence

In this case, both parties requested a preservation order for documents to be used as evidence. Finding no definitive test outlining when to grant a preservation order, the District Court for the Western District of Pennsylvania formulated the following set of factors to consider: (1) the level of concern for the continuing existence and integrity of the evidence; (2) the possibility of irreparable harm to the party requesting the preservation order in the absence of a preservation order; and (3) the ability to maintain and preserve the evidence in question. The court stated that the defendant's motion was denied based on the fact that it could not show the likelihood that the material it sought to preserve was actually in danger of being destroyed. The court went on to say that the plaintiff's motion was denied because it would have been better filed as a motion to compel, and did not even allege the possible destruction or degradation of the evidence which it sought to preserve.

Decision

The court discussed the application of the third prong to electronic evidence by saying that evidence stored on a floppy disk or on a hard drive may not be hard to store, but that information which is contained within the hard drive of a computer may be difficult to store because of the possibility of degradation or deletion when new information is added, and old information is deleted by the computer. The court went on to say that timing of a preservation order could be critical in those cases where preservation is difficult, and especially in cases where the person in possession of the hard drive is unaware that the information on the hard drive is evidence which needs to be preserved.

Preservation Orders for Computer Forensic Evidence