WWE Sanctions Ruling Pins Down Spoliation Lesson

By **Ricky Weingarten** (August 21, 2026)


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In February 2023, when WWE President Nick Khan sent the code word "langis" to Vince McMahon, the company's executive chairman at the time, McMahon asked "what in the blue hell" it meant. "Read it backwards," Khan replied.[1]

That exchange, documented in In re: World Wrestling Entertainment Inc. Merger Litigation, is what makes Delaware Chancery Court Vice Chancellor J. Travis Laster's May 26 sanctions opinion in the case memorable.[2]

While every litigator already knows that executives should stop using encrypted messaging apps for sensitive communications, there is a real lesson here concerning remedy.

WWE may be the most carefully calibrated spoliation sanctions decision in recent memory, and it should reshape how counsel approach these motions — including in federal court, where the doctrinal fit may be imperfect, but the framework is well worth adapting.

The Record

According to the court's opinion, McMahon co-founded WWE in 1982 and controlled roughly 81% of its voting power. In 2022, after anonymous emails alleged he had paid to conceal a relationship with a former employee, WWE's assistant general counsel circulated a litigation hold. It expressly covered text messages, applied to documents created in the future, and told recipients that if their settings included automatic deletion protocols, it was their responsibility to ensure relevant material was preserved.

Within weeks, Ari Emanuel, then-CEO of Endeavor Group Holdings Inc. and a longtime friend, began pursuing a transaction with McMahon, including offering indemnification and assistance with the federal investigation into his conduct. In December, after a dinner with Emanuel, McMahon told his banker that going forward with "the deal with Ari" was "probably ... the best thing to do" because "it solves a lot of problems."

McMahon, who had resigned from his roles with WWE after the initial allegations, then forced his way back onto the board, removed three independent directors and returned as executive chair on Jan. 10, 2023 — the same day the company announced a strategic review. A second litigation hold, addressed to the sale process, was issued on Jan. 19.

Two rival bidders ultimately offered more cash per share than Endeavor, but received no substantive response. Endeavor's offer gave McMahon the chairmanship of the combined company for life, the right to select five of 11 board seats, and veto rights.

Throughout the sale process, McMahon, Khan and several other WWE executives used Signal to communicate. None checked their retention settings after either hold.

Instead, they repeatedly and manually reset individual chats to auto-delete after a few hours or a day — changes that destroyed existing messages and ensured that future ones would be lost. The dates lined up with information requests from the U.S. Department of

Justice, meetings with Emanuel, several of McMahon's threatening letters to the WWE board, and the board purge.

Stockholders sued in the Court of Chancery in November 2023, contending that McMahon breached his duty of loyalty by steering the company to Emanuel and Endeavor because he knew the deal would secure him a lifetime role at the surviving company, indemnification and help with the federal investigation into his alleged misconduct.

What the Court of Chancery Did

Court of Chancery Rule 37(e), which governs the failure to preserve electronically stored information, mirrors the federal rule's structure but authorizes severe sanctions upon recklessness or intent. The court found, at a minimum, recklessness, which it defined as "conscious awareness ... that one's action or inaction" could result in the spoliation of evidence.

The court then tailored the remedy with unusual precision. Rather than broadly instructing that the missing evidence would have been unfavorable, it presumed five specific facts:

- Emanuel's promise of a continuing role influenced McMahon's decision-making;
- Emanuel's offer of indemnification and legal support did as well;
- McMahon decided to pursue a transaction with Endeavor in 2022, before WWE's strategic review began;
- Khan communicated with Emanuel between August and December 2022 to facilitate the transaction; and
- McMahon and Khan worked with Emanuel's longtime banker to steer the process toward Endeavor and away from competing bidders.

Two features of the remedy do the work.

First, the relief operated as a burden shift rather than a conclusive finding; the plaintiffs asked the court to presume those facts, not deem them established. Second, the court raised the standard for rebutting the presumptions from a preponderance of the evidence to clear and convincing evidence, reasoning that because the burden of proof determines cases in equipoise, the parties who created the evidentiary void should bear the risk of uncertainty.

The Lesson for Movants

Spoliation motions tend to cluster at the extremes: an adverse inference or default judgment, remedies courts reserve for the most egregious misconduct. The adverse inference is the more common request, and the more disappointing one. Its reputation as a potential case-ending sanction is precisely what makes it difficult to obtain.

Courts typically require a heightened showing of culpability, often coupled with proof that the loss created a meaningful evidentiary imbalance, and some have nonetheless rejected it outright as purportedly too devastating to a litigant's defense.[3]

Even when granted, the instruction is usually permissive: The fact-finder may infer that the missing evidence was "unfavorable," and a fact-finder presented with a plausible innocent explanation for the loss may simply decline to do so. But the deeper problem is its generality: "Unfavorable" as to what?

The instruction does not identify the factual proposition the missing evidence would have proved, nor does it alter the burden of proof. If the remaining evidence is in equipoise, the movant still loses.

Most spoliation falls between those extremes, and when presented with only a binary choice, courts often choose neither. WWE offers a middle path — one litigants should request affirmatively.

First, seek tailored factual presumptions. Identify the precise factual gaps the missing evidence would have filled and tie each proposed presumption to record evidence showing the communications existed, concerned the relevant subject matter and were destroyed.

In WWE, for example, the court found the temporal correlation between the deletion events and key inflection points in the transaction was especially compelling. Frame the request as a rebuttable presumption rather than a conclusive finding. That distinction makes the remedy substantially easier to grant, and the Court of Chancery relied on it. Expect the court to narrow the requested presumptions, so draft them in descending order of evidentiary support.

Second, expressly request a heightened standard for rebutting those presumptions. Few movants do this.

A presumption rebuttable by a preponderance of the evidence is far less valuable than one rebuttable only by clear and convincing evidence. The same rationale supports both requests: Because the destroyed evidence can no longer be used affirmatively or on cross-examination, the spoliator should bear the resulting uncertainty through a convincing — not merely slightly better — showing.

What New York Federal Courts Actually Grant

Set the above against the remedies typically requested and granted in New York federal courts.

In practice, four sanctions do most of the work: (1) fees and costs for bringing the motion, sometimes as the sole remedy; (2) a monetary fine payable to the opposing party or, less commonly, to the court; (3) preclusion targeted at a particular exhibit or line of testimony; and (4) leave to present evidence of the spoliation to the jury and argue its significance, without any instruction that the missing evidence was unfavorable.[4]

These are meaningful sanctions, and fees should almost always be requested. But notice what most of them do not accomplish: They do not fill the evidentiary gap.

A monetary sanction does nothing to resolve the proof problem created by the missing evidence. Preclusion helps only if the spoliator must rely on the same subject matter affirmatively.

Allowing the jury to hear about the spoliation may influence the general narrative, but it does not shift the burden of proof. Measured against the U.S. Court of Appeals for the Second Circuit's 1999 ruling in West v. Goodyear Tire & Rubber Co., which instructed that sanctions should both restore the prejudiced party and place the risk of an erroneous judgment on the party responsible for the loss, the prevailing approaches underdeliver on both fronts.[5]

The closest New York federal analogue is the U.S. District Court for the Southern District of New York's ruling in Europe v. Equinox Holdings Inc.[6]

After finding negligent loss of an employee schedule, but no intent to deprive, the court permitted the plaintiff to offer evidence of the loss, allowed the jury to infer that co-workers' lateness patterns remained the same or worsened during the missing month, and precluded the defendant from arguing otherwise.

The result was a proposition-specific, one-directional inference coupled with a bar on the contrary argument — in other words, much of WWE's structure, implemented under Rule 37(e)(1) without any finding of intent. That's the model New York movants should build on.

Federal Rule 37(e)'s Intent Requirement — and Two Ways Around It

As constructed, the WWE remedy is unavailable in federal court. Rule 37(e) of the Federal Rule of Civil Procedures divides ESI spoliation remedies into two tiers.

Subsection (e)(1) is the curative tier: Upon a finding of prejudice alone, a court may order measures "no greater than necessary to cure the prejudice," without regard to the spoliator's state of mind. Subsection (e)(2) authorizes presumptions, adverse-inference instructions, dismissal and default, but only upon a finding that the party acted with the intent to deprive another of the information's use in the litigation.

That framework is the obstacle.

In Hoffer v. Tellone in 2025, the Second Circuit held that, despite certain precedent suggesting otherwise, federal Rule 37(e)(2)'s intent-to-deprive requirement must be proven by a preponderance of the evidence; negligence, gross negligence and even knowing conduct are insufficient.[7]

Recklessness — the express trigger under Court of Chancery Rule 37(e)(2) and the only culpability finding in WWE — does not suffice. The tailored presumptions and heightened rebuttal burden imposed in WWE therefore appear to be Rule 37(e)(2) relief that is unavailable in the Second Circuit absent a finding of intent.

Two avenues remain. The first is the avenue established in Equinox.

A presumption that the lost evidence was unfavorable is classic federal Rule 37(e)(2) relief. By contrast, a curative order permitting a proposition-specific, one-directional inference while precluding the opposing party from arguing the contrary has been granted under federal Rule 37(e)(1) based on negligence alone.

The line between the two is thin, so litigants should move in the alternative: Request proposition-specific presumptions and a heightened rebuttal standard if intent is found, and an Equinox-style curative package if it is not.

The heightened rebuttal standard is the more difficult ask. Although Hoffer addressed only the burden for proving intent, a court may read its rejection of a clear-and-convincing standard as reflecting broader reluctance to alter burdens of proof under federal Rule 37(e).

The second avenue is non-ESI evidence. Federal Rule 37(e) applies only to electronically stored information. Hoffer expressly left undisturbed the Second Circuit's 2002 ruling in Residential Funding Corp. v. DeGeorge Financial Corp.,[8] which governs spoliation of nonelectronic evidence under the court's inherent authority, and district courts continue to apply it.[9]

Where the spoliated evidence includes hard-copy documents, physical evidence or electronic devices — as it often does — a finding of recklessness or negligence may still support inference-based relief for that subset.

Conclusion

For New York federal practitioners, everything therefore turns on proving intent, and the record supporting that finding is built in discovery, not in the sanctions brief. Hoffer also clarifies that intent may be proven circumstantially by a preponderance of the evidence.

WWE illustrates what that record may look like: litigation holds expressly addressing auto-deletion, custodians who changed deletion settings chat by chat rather than globally, changes timed to substantive events, selective deletion of some threads but not others, and deposition testimony the court found incredible.

The Court of Chancery required only recklessness. In the Second Circuit, however, that same record may be the difference between a proposition-specific presumption and a fee award.

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[1] https://www.postwrestling.com/2026/05/27/vince-mcmahon-and-nick-khan-sanctioned-by-judge-in-wwe-merger-lawsuit-heightening-their-burden-to-prevail-at-trial/.

[2] In re World Wrestling Entertainment, Inc. Merger Litigation, 2026 WL 1481088 (Del. Ch.).

[3] See R.F.M.A.S., Inc. v. So, 271 F.R.D. 13 (S.D.N.Y. 2010).

[4] See, e.g., In re Keurig Green Mountain Single-Serve Coffee Antitrust Litigation, 341 F.R.D. 474 (S.D.N.Y. 2022) (attorney's fees and leave to offer evidence of spoliation at trial); CAT3, LLC v. Black Lineage, Inc., 164 F.Supp.3d 488 (S.D.N.Y. 2016) (preclusion of spoliator's use of evidence and attorney's fees); Curcio v. Roosevelt Union Free School District, 283 F.R.D. 102 (E.D.N.Y. 2012) (motion fees as sole sanction); Passlogix, Inc. v. 2FA Technology, LLC, 708 F.Supp.2d 378 (S.D.N.Y. 2010) ($10,000 fine payable to the court); Harkabi v. SanDisk Corp., 275 F.R.D. 414 (S.D.N.Y. 2010) ($150,000 monetary sanction); Wade v. Tiffin Motorhomes, Inc., 686 F.Supp.2d 174 (N.D.N.Y. 2009) (expert testimony excluded on summary judgment).

[5] West v. Goodyear Tire & Rubber Co., 167 F.3d 776 (2d Cir. 1999).

[6] Europe v. Equinox Holdings, Inc., 592 F.Supp.3d 167 (S.D.N.Y. 2022).

[7] Hoffer v. Tellone, 128 F.4th 433 (2d Cir. 2025).

[8] Residential Funding Corp. v. DeGeorge Financial Corp., 306 F.3d 99 (2d Cir. 2002).

[9] See Oakley v. MSG Networks, Inc., 792 F.Supp.3d 394 (S.D.N.Y. 2025).