The issue in *BW v. Sue* is the question of whether the defendant, BW, knowingly deleted evidence after they were notified of possible litigation, determining whether the court can impose sanctions or grant default judgement. If it is found that Lacy and Earnest intentionally deleted the emails in fear of a possible suit, then the motions for sanctions and default judgement will be granted. Default judgement requires intentional action. Based on whether the court can impose any sanctions, the court must deem the aim of the defendant.

The rule of this case stems from FRCP 37 (e) and takes procedural history from *Freeman v. Giuliani.* In FRCP 37 (e), it states that if electronic information is lost, upon finding prejudice to another party from loss of the information, the court may order measures no greater than necessary to cure the prejudice. From this, it states that sanctions are in order if: ESI was supposed to be preserved in anticipation of litigation; a party failed to preserve their ESI; ESI was lost; and ESI cannot be restored. In *Freeman v. Giuliani,* Giuliani did not take proper measures to back up and save information when he was notified of litigation. Due to this, sanctions were warranted.

Analyzing *BW v. Sue*, Sue should try to analogize to this case while BW needs to distinguish from it. Sue will have a harder time analogizing as the documents were deleted a little over a week before the lawsuit was received. Sue will argue that she sent an email stating that she will file a lawsuit to the BW leadership team, and it was at that point when the company should have preserved ESI in anticipation. It is the fault of the BW leadership team to not advise their employees that a potential lawsuit is coming. She will state that this means 1) sanctions are in order as ESI was lost, the info should have been preserved, the party should have informed and preserved, the information is unreplaceable, and the plaintiff was highly prejudiced. Default judgement cannot be granted because it was not in the intention of a lawsuit. Lacy was not intending to hide information from Sue, and the leadership team did not intentionally tell them in hopes of information being deleted. Sue could argue that the leadership team did exactly this, but it could not be granted in court.

On the contrary, BW will argue that they did not delete them knowing that there was a potential lawsuit. There was no knowledge of when the lawsuit would take place, or even if she was simply threatening the company. They could state that if Sue wanted them to preserve information at that moment, she would have stated that in the email and did not know they had the duty to preserve at the time. Considering this, the court could rule that sanctions are not in order due to the lack of knowledge of a potential lawsuit, also meaning that there is no possibility of default judgement being granted.

In conclusion, the court should impose sanctions on BW for deleting files with the knowledge of a potential trial, as the leaders should have passed notice of the lawsuit. Although sanctions are in place, default judgement cannot be granted as there was no intentional deletion of evidence. It is impossible to say that the leaders did not tell them of the lawsuit fully knowing they would delete evidence out of guilt.