

Wells Fargo Oops: Confidential Data Went to Opposing Side

It was a mistake and a bad one. In responding to a subpoena for information, a lawyer for Wells Fargo inadvertently sent the opposing attorney in a lawsuit a disc filled with confidential information, including Social Security numbers, for 50,000 of the bank's wealthiest clients, according to a post on the website of **Androvett Legal Media & Marketing**. This embarrassing and damaging error came to light in a *New York Times* article.

Telling the media is not the appropriate way to handle such a transgression, says Houston trial lawyer **John Zavitsanos** of **Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing P.C. or AZA**, who has tried more than 75 cases to verdict. Normally, the recipient of the material would return it to the sender, understanding that mistakes like this happen sometimes, he said.

"Instead, this may boomerang on the people who publicized the breach, and they may get in trouble for it. Most judges are human beings and understand mistakes – and they don't like gotchas.

"Also, many states have snapback procedures whereby if you inadvertently turn over privileged information, you can retrieve it and say it was inadvertently produced. Until that privilege is determined, the receiving party can't hold onto it. There are a slew of states that have provisions like that. And even if this involved a state without a snapback rule, the other side can file a motion to protect their confidential information.

"Of course, if Wells Fargo is unsuccessful in retrieving the

information, its law firm may be subject to claims and penalties. Usually you come up with a set of protocols to prevent this from happening. However, every lawyer with an active litigation practice has produced something in error at some point. You call the other side and ask them to return it. We've all been there."

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