



Plaintiff's Vacation to Hawaii was a Nightmare, or not?

November 6, 2014

Riley v. Marriott Int'l, Inc., 2014 U.S. Dist. LEXIS 135728 (W.D.N.Y. Sept. 25, 2014).

What happens when your dream vacation turns into a nightmare? That's easy; it's America, so obviously, you sue everyone who may be responsible. Sometimes, if you're lucky, the opposing side may not comply with e-discovery laws, and that may ultimately lead to an advantage in your case. That's exactly what occurred to the Rileys when their visit to Hawaii was cut short due to a slip-and-fall accident at the hotel they were staying at.

The Rileys' claims arise from Ms. Riley slipped and fell on the floor of the Marriott's Maui Ocean Club hotel's ("Hotel") parking garage after exiting an elevator. The Rileys asserted that the Hotel failed to take reasonable precautions to prevent her fall and attempted to establish that claim by using surveillance camera footage that monitored and recorded the area of Ms. Riley's accident twenty-four hours a day. Under the Hotel's preservation policy, the recordings are maintained for 30 days and then overwritten, unless a claim arises. In those situations, the footage is sent to a loss-prevention employee at the Hotel who becomes responsible for reviewing and preserving the data.

During discovery, the Rileys sought to obtain the footage from before and after the fall, as well as the maintenance logs (also referred to as "sweep sheets") for the area where the accident took place. In responding to the Rileys' demands, the Hotel only provided approximately seven minutes of the footage, which began about one minute before the accident and ends before Ms. Riley is removed from the ground. Similarly, the sweep logs for the accident were destroyed by the Hotel. As a result of these preservation failures, the Rileys moved for summary judgment and sanctions due to spoliation.

As held by the Court, "[a] party bringing a spoliation motion must demonstrate that: (1) the party charged with destroying the evidence had an obligation to preserve it; (2) the records were destroyed with a 'culpable state of mind'; and, (3) the destroyed evidence was relevant to the party's claim or defense." In the case at hand, the first prong was met as neither party disputed the fact that the Hotel had a duty to preserve the destroyed evidence. In addressing the culpability prong, the Court, in this case, ruled that,

Here, Marriott has failed to offer any justification for its failure to preserve the evidence. Indeed, in its papers opposing the motion, Marriott failed to offer any facts concerning how or why the evidence was

destroyed.

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Although facing a serious motion for sanctions with potentially significant consequences, Marriott apparently did not investigate the destruction of the relevant evidence or, if it did, explain the results of the investigation.

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The failure to provide the Court with any sworn facts from persons with knowledge of the destruction of the challenged evidence demonstrates such a lack of diligence that it suggests bad faith destruction. In any event, Marriott's failure to preserve the entire video footage relating to Linda's accident and the sweep logs for the day in question despite the Hotel's loss prevention employee's testimony that he knew that he had a duty to preserve relevant evidence constitutes, at a minimum, gross negligence.

Finally, with regard to whether the deleted data was relevant to the Rileys' claims, the Court noted it could "easily conclude that the Rileys have demonstrated that the destruction of the sweep logs and the video footage prejudiced them[,] as the destroyed evidence would have likely provided information concerning the conditions of the floor and whether the Hotel had notice of those conditions. Moreover, the fact that the Hotel could not provide an explanation as to why the data was deleted permitted "an inference that the missing evidence was unfavorable to [the Hotel]". Thus, the Court found that prejudice was warranted and that the Rileys had demonstrated spoliation of evidence.

As a result of the Hotel's spoliation, the Court granted the Rileys' motion for sanctions and decided that an adverse inference would suffice under the circumstances. That is, the factfinder would be "permitted, but not required, ... to infer that the missing video footage would have been favorable to the Rileys and unfavorable to [the Hotel]".

If you or your company has any questions or concerns regarding e-discovery related issues, please email James G. Ryan at jryan@cullenanddykman.com or call him at 516-357-3750.

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