

Omni Can't Force Return Of Sprint Docs In Privacy Action

By **Jimmy Hoover**

Law360, Washington (August 13, 2015, 5:47 PM EDT) -- Omni Hotels Management Corp. has suffered a setback in its bid to shake a class action alleging the hotel company illegally recorded phone conversations when a California federal judge this week refused to force the class to return documents produced by Sprint Corp.

In an order filed Monday, U.S. District Judge Christina A. Snyder said Omni lacked standing to compel the class to turn over data that Sprint had voluntarily produced containing information about subscribers who had called Omni on their cellphones. Plaintiffs subpoenaed Sprint along with Verizon Wireless and AT&T Inc. in November in a move partially aimed at helping prove class members were located in California during the period in question.

While AT&T and Verizon dragged their feet at the request pending guidance from the court in light of California's public utilities code, Sprint went ahead and handed over the information, which Omni attempted to undo in a July motion to compel.

In her decision, Judge Snyder also ruled that, given the public utility code, plaintiffs, through AT&T and Verizon, would have to first obtain written consent from the two companies' subscribers before gaining access to their records.

But in a minor victory for the plaintiffs, Judge Snyder allowed for a combined consent request and notice notifying subscribers of their potential class-member status, which she considered the "most efficient course of action."

Omni had argued against combining the two and instead advocated that the subscribers first be sent the consent form. Judge Snyder reasoned that "Omni's preferred order of operations would prejudice plaintiffs and the potential class members by forcing the subscribers to decide whether to consent to the release of their information without being fully informed of the consequences of that decision."

Named plaintiff Steven Ades filed the class action in March 2013, claiming he called Omni's toll-free number to make a reservation, and during the ensuing conversation, he revealed sensitive information, including credit card numbers, to the call center representative in order to book accommodations. Ades alleges he was never told the call was being recorded.

The class was certified in September to include those in California who had conversations on their cellphones with Omni Hotels representatives between March 2012 and March 2013.

The plaintiffs are represented by Zev B. Zysman of the Law Offices of Zev B. Zysman and by James F. Clapp, James T. Hannink and Zach P. Dostart of Dostart Clapp & Coveney LLP.

Omni is represented by Angela C. Agrusa and David B. Farkas of Liner LLP and Robert M. Hoffman of Andrews Kurth LLP.

The case is Steven Ades et al. v. Omni Hotels Management Corp. et al., case number 2:13-cv-02468, in the U.S. District Court for the Central District of California.

--Editing by Chris Yates.

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