

## Omni Hotels Blasts Bid For Discovery Appeal In Privacy Action

By **Jody Godoy**

*Law360, New York (June 9, 2015, 9:00 PM ET)* -- A class alleging Omni Hotels Management Corp. illegally recorded phone conversations is not entitled to appeal a California federal court's ruling that state law requires cellular carriers to get subscribers' consent before producing their information, the company argued in a filing Monday.

In May, the plaintiffs requested certification of an interlocutory appeal on Judge Christina Snyder's ruling that California law restricting how phone companies share subscribers' information also applies to cellular carriers. The hotel chain argued that the plaintiffs' request does not meet the criteria for such an appeal.

"The issue before the court is whether this case should stop dead in its tracks to indulge a piecemeal appeal of a discovery order," Omni said in its response to the plaintiffs motion to appeal.

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.

In November, the class subpoenaed nonparties Verizon, AT&T and Sprint seeking information on subscribers that had called Omni on their cellphones, including their names, addresses, details of the calls to Omni, and location of the cell towers that transmitted in the calls.

In March, Omni filed a motion to compel the plaintiffs to disclose the notice Verizon would send customers telling them about the subpoena.

Judge Snyder then questioned whether a section of California Public Utilities Code prohibiting "telephone or telegraph" corporations from disclosing of subscriber call pattern and demographic information without their express consent also applied to the wireless carriers.

After considering briefs from the parties and AT&T and Verizon, as well as the "sparse" case law on the issue, the judge ruled the California law applies to "cellular telephone subscribers, and that the names, addresses and physical whereabouts of subscribers at the time of those calls constitute information

protected by that statute.”

The judge directed AT&T and Verizon to send the relevant subscribers notices asking them to consent to releasing their information to the plaintiffs. Sprint had already produced records in response to the subpoena.

On May 28, the class sought to appeal the judge's ruling to the Ninth Circuit, saying the circuit court has not ruled on the issue and the lower courts have issued contradictory rulings, to the extent they have considered the matter.

Omni argued in response Monday that the plaintiffs did not meet the requirements for requesting an interlocutory appeal, which is an “extraordinary” form of relief.

Counsel for the parties did not reply to requests for comment Tuesday.

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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