



Neutral

As of: January 22, 2025 9:04 PM Z

De Leon v. Trahan

United States District Court for the Western District of Texas, Pecos Division

August 28, 2024, Decided; August 28, 2024, Filed

PE-21-CV-00086-DC

Reporter

2024 U.S. Dist. LEXIS 154608 *

RUDY DE LEON, Plaintiff, v. CORY JOSEPH TRAHAN and NEW PRIME, INC., D/B/A PRIME, INC., Defendants.

For Rudy de Leon, Plaintiff: James Daniel Tawney, LEAD ATTORNEY, Tawney Acosta & Chaparro [*2] P.C., El Paso, TX.

For Rudy de Leon, Plaintiff: Maxey M. Scherr, LEAD ATTORNEY, Scherr Law Firm PLLC, El Paso, TX.

For Rudy de Leon, Plaintiff: Mark D. Standridge, PRO HAC VICE, Tawney Acosta Chaparro, Las Cruces, NM.

Core Terms

spoliation, reasonable anticipation, duty to preserve, destroyed, documents, parties

Counsel: [*1] For Cory Joseph Trahan, Defendant: Cal Mundell, Cal Mundell Law Firm PLLC, El Paso, TX.

For Cory Joseph Trahan, Defendant: Darryl S. Vereen, US Attorney's Office, San Antonio, TX.

For Cory Joseph Trahan, Defendant: James W. Essman, Shafer Davis O'Leary & Stoker, Odessa, TX.

For Cory Joseph Trahan, Defendant: Dick R. Holland, LEAD ATTORNEY, Midland, TX.

For Eximarc Incorporated, Defendant: William R. Moyer, Moyer Firm PLLC, Houston, TX.

For Logistic One LTD, Defendant: Jose C. Vega Jr., Robles Bracken & Hughes, El Paso, TX.

For Mitchell Aram Ramirez, Defendant: William R. Moyer, LEAD ATTORNEY, Moyer Firm PLLC, Houston, TX.

For New Prime Inc., d/b/a Prime Inc., Defendant: Cal Mundell, Cal Mundell Law Firm PLLC, El Paso, TX.

For New Prime Inc., d/b/a Prime Inc., Defendant: Darryl S. Vereen, US Attorney's Office, San Antonio, TX.

For New Prime Inc., d/b/a Prime Inc., Defendant: James W. Essman, Shafer Davis O'Leary & Stoker, Odessa, TX.

For New Prime Inc., d/b/a Prime Inc., Defendant: Dick R. Holland, LEAD ATTORNEY, Midland, TX.

For Rudy de Leon, Plaintiff: Daisy Chaparro, Tawney Acosta & Chaparro P.C., El Paso, TX.

Judges: DAVID COUNTS, UNITED STATES DISTRICT JUDGE.

Opinion by: DAVID COUNTS

Opinion

ORDER DENYING MOTION TO COMPEL

BEFORE THE COURT is Plaintiff Rudy De Leon's ("Plaintiff" or "De Leon") Expedited Motion to Compel or in the Alternative for Spoliation Inference (the "Motion") (Doc. 186). Having considered the Motion, the Court **DENIES** the Motion in full.

BACKGROUND

The above-captioned lawsuit (the "Case") was originally filed in Texas state court on August 31, 2021, and concerns a multi-vehicle accident that occurred during Winter Storm Uri on February 14, 2021 (the "Incident"). The Case was later removed to this Court on December 7, 2021. Since the filing of this Case nearly three years ago, the parties have continued to stall and argue over discovery. The central point of contention concerns production of Omnitrac data (the "Data") that would potentially provide information from Defendant's vehicle relating to the Incident. Specifically at issue is the Data's apparent unavailability and the reason for [*3] its

unavailability.

On July 26, 2024, Plaintiff filed the Motion (Doc. 186), requesting this Court (1) compel the Data within 24 hours, (2) compel Defendant's service contract with Omnitracs, (3) compel Rodney Rader ("Rader") for a deposition,¹ (4) order an adverse inference against Defendants, and (5) set an immediate telephonic hearing. On August 9, 2024, Defendants filed their response to the Motion (the "Response"). Shortly after, Plaintiff filed their reply (the "Reply").

LEGAL STANDARD

District courts possess inherent authority to "fashion an appropriate sanction for conduct which abuses the judicial process."² Such abuses include noncompliance with court orders and spoliation of relevant evidence. Parties engaging in such misconduct may subject themselves to sanctions under [Rule 37 of the Federal Rules of Civil Procedure](#).

Under [Rule 37](#), a party may "move for an order compelling disclosure or discovery" and for appropriate sanctions if a party fails to make a required disclosure under [Rule 26\(a\)](#).³ [Rule 26\(a\)](#) requires, among other things, parties to produce "all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses."⁴

Of course, the [*4] ability to produce documents or information depends on their accessibility. Several laws and principles require parties to preserve relevant

documents and information. For example, federal common law requires litigants to preserve relevant evidence when they reasonably anticipate litigation.⁵ This duty extends under [Rule 37\(e\) of the Federal Rules of Civil Procedure](#), which requires litigants to take "reasonable actions" when they anticipate litigation to preserve relevant electronically stored information ("ESI").⁶ Determining when a party should "reasonably anticipate litigation" can prove challenging, especially in the absence of a filed complaint or formal litigation hold. Additionally, regulations such as [49 C.F.R. § 395.8\(k\)](#) impose targeted preservation requirements, mandating that motor carriers maintain "all supporting documents for each driver it employs for a period of six months from the date of receipt."⁷

When addressing discovery abuses through [Rule 37](#), courts have access to a range of remedial options. In choosing the appropriate remedy, a court must ensure that it is "no harsher than necessary to respond to the need to punish [*5] or deter and to address the impact on discovery."⁸ An appropriate sanction should "(1) deter parties from engaging in spoliation; (2) place the risk of an erroneous judgment on the party who wrongfully created the risk; and (3) restore 'the prejudiced party to the same position he would have been in absent the wrongful destruction of evidence by the opposing party.'"⁹

An adverse inference or sanction against the spoliator is warranted only upon a showing of "bad faith" or "bad conduct,"¹⁰ and the party seeking the spoliation

¹ Plaintiff does not clearly explain the need for Rader's deposition nor why Rader need be compelled; Plaintiff simply hurls this additional request to compel at the end of its Motion. Although the Court presumes that Plaintiff seeks deposition of Rader to inquire about the Data and its modification, because, as discussed below, the Court will decline to compel the Data, this Court denies the request to compel Rader's deposition. Plaintiff may re-submit a request to the Court concerning Rader's deposition in the event that Plaintiff still needs the deposition and is unable to work with Defendants to schedule it.

² [Chambers v. NASCO, Inc.](#), 501 U.S. 32, 44-45, 111 S. Ct. 2123, 115 L. Ed. 2d 27 (1991).

³ [Fed. R. Civ. P. 37\(a\)\(3\)\(A\)](#).

⁴ *Id.* 26.

⁵ See R. Keeling, *Sometimes Old Rules Know Best: Returning to Common Law Conceptions of the Duty to Preserve in the Digital Information Age*, 67 CATH. U. L. 67 (2018) (providing history of common law duty to preserve and comparing to today's standard).

⁶ [Fed. R. Civ. P. 37\(e\)](#).

⁷ [49 C.F.R. § 395.8\(k\)](#).

⁸ [Hunt v. Marquette Transp. Co. Gulf-Inland, LLC, No. CIV.A. 09-6055, 2011 U.S. Dist. LEXIS 100401, 2011 WL 3924926, at *2 \(E.D. La. Aug. 5, 2011\)](#), report and recommendation adopted, [No. CIV.A. 09-6055, 2011 U.S. Dist. LEXIS 100318, 2011 WL 3957254 \(E.D. La. Sept. 6, 2011\)](#).

⁹ *Id.* (internal citation omitted).

¹⁰ [Condrey v. SunTrust Bank of Georgia](#), 431 F.3d 191, 203 (5th Cir. 2005) (internal citation omitted).

sanction bears the burden of proof.¹¹ A party seeking a sanction based on spoliation must establish that: (1) the party with control of the evidence had a duty to preserve it when it was destroyed; (2) the evidence was destroyed "with a culpable state of mind"; and (3) the destroyed evidence was "relevant to the party's claim or defense such that a reasonable trier of fact could find that it would support that claim or defense, such that the spoliation resulted in prejudice to the innocent party."¹² Again, the [Rule 37](#) duty to preserve is based on whether the party reasonably anticipated litigation.

DISCUSSION

With respect to the Data, the primary [*6] issue is its apparent absence. Therefore, the Court must determine whether to compel production, issue a spoliation instruction, or take no action, based on whether the absence results from improper conduct—including whether Defendant violated this Court's prior Order or failed in its duty to preserve the Data. Having considered the Motion and the Response, this Court finds insufficient evidence to grant the request to compel or issue sanctions.

I. A Spoliation Inference Is Not Warranted.

As an alternative to an order to compel, Plaintiff asks this Court to impose sanctions in the form of a spoliation instruction. However, importantly, Plaintiff has failed to identify a valid duty to maintain the Data beyond six months after the Incident.

As a reminder, a party seeking a sanction based on spoliation must prove that the party with control over the evidence had *an obligation to preserve it at the time it was destroyed*.¹³ Under [Rule 37](#), a duty to preserve such evidence generally arises when that party

reasonably anticipates litigation.¹⁴

The two potential sources of duty cited by Plaintiff are (1) that Defendant reasonably anticipated litigation and (2) [49 C.F.R. § 395.8\(k\)](#) and/or [49 C.F.R. § 395.22\(i\)](#), which require motor carriers to maintain [*7] certain driver and electronic logging device ("ELD") records for six months. For the reasons below, the Court finds no duty that would have required Defendant to maintain the Data, at least past August 14, 2021.

Although [49 C.F.R. § 395.30\(f\)](#) notes that "[a] motor carrier must not alter or erase, or permit or require alteration or erasure of, the original information collected concerning the driver's hours of service, the source data streams used to provide that information, or information contained in any ELD that uses the original information and HOS source data," as quoted in Plaintiff's Motion, the Court does not read this provision to prohibit *indefinitely* the alteration or erasure of ELD. Both [49 C.F.R. § 395.8\(k\)](#) and [49 C.F.R. § 395.22\(i\)](#) impose a preservation timeline of **six months** for various vehicle-related data. Six months after the Incident was August 14, 2021, approximately two weeks before Plaintiff instituted this Case and before Plaintiff notified Defendant of any preservation request. Further, even if Defendant "had a regulatory obligation to maintain the driver logs, that is not dispositive of whether there has been a violation of [Rule 37\(e\)](#)."¹⁵

Plaintiff's second duty argument posits that Defendants "knew or should [*8] have known of the potential for litigation stemming from the collision."¹⁶ Yet, in its Motion, Plaintiff does not provide any reason why Defendants knew or should have known litigation was forthcoming. In its Reply, Plaintiff notes that Defendants were "aware of the potential for litigation" because Defendant Prime "presented a claim against the insurance carrier for A-Garcia Produce (Plaintiff's employer) on July 6, 2021," and because the "claim was not resolved until November 1, 2021."¹⁷ While this is hardly evidence that Defendants knew litigation was

¹¹ [Ashton v. Knight Transp., Inc.](#), 772 F. Supp. 2d 772, 799 (N.D. Tex. 2011) (internal quotation marks omitted).

¹² [Cornejo v. EMJB, Inc.](#), No. SA-19-CV-01265-ESC, 2021 U.S. Dist. LEXIS 190582, 2021 WL 4526703, at *2-3 (W.D. Tex. Oct. 4, 2021) (citing [Rinkus Consulting Grp., Inc. v. Cammarata](#), 688 F. Supp. 2d 598, 615-16 (S.D. Tex. 2010)).

¹³ [Cornejo](#), 2021 U.S. Dist. LEXIS 190582, 2021 WL 4526703, at *2-3 (citing [Rinkus Consulting Grp.](#), 688 F. Supp. 2d at 615-16).

¹⁴ [Fed. R. Civ. P. 37\(e\)](#).

¹⁵ [Manson v. B&S Trucking of Jackson, LLC](#), No. SA-21-CV-01181-XR, 2023 U.S. Dist. LEXIS 75558, 2023 WL 3170494, at *3 (W.D. Tex. May 1, 2023), reconsideration denied, No. SA-21-CV-01181-XR, 2024 U.S. Dist. LEXIS 94790, 2024 WL 3223693 (W.D. Tex. May 28, 2024).

¹⁶ Motion at 9.

¹⁷ Reply ¶ 5.

forthcoming, the Court need not consider arguments raised for the first time in a reply.¹⁸

As an aside, this Court notes that Plaintiff could have easily avoided this issue by sending a litigation hold letter or, in some form or fashion, putting Defendants on notice that this Case was forthcoming. As Plaintiff knows, the relevant Incident occurred on February 14, 2021. This Case was instituted on August 31, 2021. Plaintiff had a full six months to place Defendants on notice that said Data would be necessary for litigation.

Finally, the Court notes that Plaintiff has presented zero evidence that Defendant acted in bad faith or destroyed the [*9] Data with a culpable state of mind. Ultimately, Plaintiff has not shown Defendants had a duty to preserve the Data past the six-month period required, and thus this Court will not instruct the jury on spoliation.

II. An Order to Compel Would Be Futile.

Plaintiff's primary request is for an order to compel production of the missing Data. This Court already ordered Defendants to produce the Data in its previous Order (Doc. 184). However, Defendants explained that because the Data was not requested in time, the Data—or at least some of it—is no longer accessible. Thus, an order to compel non-existent Data would be futile.

With respect to requests for production, [Rule 34\(b\)\(2\)\(E\)](#) requires that "[a] party must produce documents as they are kept in the usual course of business[.]"¹⁹ Deposition testimony and several filings in this Case demonstrate that it is Defendant's usual course of business to download Omnictracs data *only if there is an accident involving bodily injury*.²⁰ Plaintiff has presented no evidence that Defendants were aware of any injury at any time before the filing of this Case, nor any statute or regulation mandating preservation of such data past six

months. Thus, it does not appear to be in [*10] Defendant's usual course of business to maintain such records.

This Court, therefore, refuses to compel the Data because Defendants have already stated in writing that the Data does not exist, and the Court is unwilling to needlessly expend judicial resources via a request that Defendants "confirm" that their prior statements to the Court are still true. This Court presumes that Defendants understand they are under a continuing duty to supplement disclosures²¹ and that failing to do so would constitute sanctionable conduct as it would violate both the Federal Rules of Civil Procedure and this Court's prior Order (Doc. 184). And, as discussed above, Plaintiff has not shown that Defendant had a duty to maintain this Data until the date this Case was filed.

Thus, unless Plaintiff can demonstrate that Defendant(s) had a duty to maintain the Data for longer than six months, that Plaintiff timely issued a litigation hold notice, or that some other proof exists that Defendant(s) should have reasonably anticipated litigation, the Court **DENIES** Plaintiff's request to compel the Data.

Having denied the request to compel the Data, the Court further **DENIES** the request to compel Defendant(s) [*11] to produce its service contract with Omnictracs. Plaintiff has not properly demonstrated how this contract is relevant to the Case.

The Court also **DECLINES** Plaintiff's request for an immediate telephonic hearing and **DECLINES** to compel Rader for deposition as Plaintiff has not sufficiently briefed this Court on Defendants' supposed failure to produce Rader for deposition.

It is so **ORDERED**.

SIGNED this 28th day of August, 2024.

/s/ David Counts

DAVID COUNTS

UNITED STATES DISTRICT JUDGE

¹⁸ [Jones v. Cain, 600 F.3d 527, 541 \(5th Cir. 2010\)](#) ("Arguments raised for the first time in a reply brief are generally waived.").

¹⁹ [Fed. R. Civ. P. 34\(b\)\(2\)\(E\)](#).

²⁰ See, e.g., Plaintiff Rudy De Leon's Emergency Motion to Continue Trial and Request for Telephonic Hearing (Doc. 182), Ex. D (Deposition of Dennis Davis) ¶¶ 12-21 (explaining standard procedure is to download data only in anticipation of potential litigation when there is bodily injury); Response ¶¶ 1-2.

²¹ *Id.* [26\(e\)](#) (mandating supplementation of discovery disclosures "in a timely manner if the party learns that in some material respect the response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or as ordered by the court").

End of Document