

New Decision Alert: Sanction For Spoliation of Social Media, “Facebook” Electronic Information

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In a recent decision from the District of New Jersey, *Gatto v. United Air Lines, Inc, et al.*, No. 10-cv-1090, 2013 U.S. Dist. LEXIS 41909 (D.N.J. March 25, 2013), the Court found that the Plaintiff had destroyed and/or failed to preserve electronic information by deactivating his “hacked” Facebook account, and granted Defendants’ request for an adverse inference instruction at trial. This decision is noteworthy because the Court found spoliation even where Plaintiff claimed that he was blameless and that the electronic information had been deleted through no fault of his own.

In *Gatto*, Plaintiff claimed that he suffered permanently disabling injuries while employed as a ground operations supervisor for JetBlue Airways Corp. He claimed in his lawsuit that his injuries prevented him from working and limited his physical and social activities. Among other things, Defendants requested during discovery that Plaintiff produce documents and information concerning his social media accounts. Plaintiff eventually provided access to his Facebook account. However, after receiving a notification from Facebook of unauthorized access to his account, Plaintiff deactivated the account and failed to reactivate it within fourteen days, resulting in the total loss of all information, which could no longer be retrieved.

The Court found that Plaintiff engaged in spoliation, entitling Defendants to the adverse inference instruction. In doing so, the Court rejected Plaintiff’s arguments that he reasonably deactivated the Facebook account due to being “hacked into” during his divorce proceeding, as well as Plaintiff’s argument that the permanent deletion was accidental and solely attributable to Facebook’s automatic deletion policy concerning deactivated accounts. The Court reasoned that Plaintiff intentionally deactivated the account, which resulted in the permanent deletion, and that the adverse inference instruction was appropriate because Plaintiff had failed to preserve relevant evidence and the Defendants were prejudiced thereby.

While *Gatto* involves a personal injury plaintiff, this scenario could easily arise in a corporate context as well. Both in-house and outside counsel should be proactive in protecting their clients through timely issuance of litigation hold letters and other measures to ensure that electronic and other potential discovery materials are preserved and not allowed to be purposefully or automatically deleted.

We will be happy to discuss any aspect of this case with you.

** This article is for informational purposes only, does not constitute legal advice, and may not be reasonably relied upon as such. You should consult a qualified attorney for independent legal advice with regard to any particular set of facts.*

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