

From: Ira Gould <gould@igouldlaw.com>
Date: July 29, 2010 11:20:04 AM EDT
To: "Cenar, Kara" <Kara.Cenar@bryancave.com>
Cc: "Seale, Merili" <Merili.Seale@bryancave.com>, "rgreely@igouldlaw.com" <rgreely@igouldlaw.com>
Subject: RE: Rule 408 Settlement Communication RE Pringle Matter

Ok, this is a very long way of saying that the date thing was a wild goose chase. The other comments are just talk. If the guy wrote the song before your clients did, which is the case, and it is what was sent to you, matter essentially over. You are going to get an appropriate response to the various issues associated with the Pringle claim sometime next week, separate and apart from the written response you will be getting re the Batts/Mohr claim, and I am sure that these two responses will provide our best answers to your issues, in which case there will be no need to discuss any substantive issue or circumstance on the 16th. In advance of the meeting, my co-counsel and I would like to know exactly what your positions are and for you to know exactly what our positions are and have no further need to debate those subjects.

We are preserving evidence, of course, and I assume that all of your clients and the other parties are preserving theirs based on the allegations set out in the proposed complaint that you have.

Ira Gould

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From: Cengar, Kara [mailto:Kara.Cengar@bryancave.com]
Sent: Wednesday, July 28, 2010 3:10 PM
To: Ira Gould
Cc: Seale, Merili; rgreely@igouldlaw.com
Subject: Re: Rule 408 Settlement Communication RE Pringle Matter

Ira,

Thank you for your email and Ryan's memo. Respectfully I disagree with your conclusion that it bears no relevance to the NRG files or the issues of the integrity (or lack thereof) of the claim.

Both your email and Ryan's memo confirm your acknowledgement and now direct firsthand knowledge that computer files, including music files and data files when saved, converted, imaged, or otherwise transferred can be altered or modified intentionally or unintentionally. Ryan's memo provides an example of a trained lawyer copying computer files and because of whatever computer program he was using (his suspicion is iTunes computer code) a creation date 16 years earlier was attached to the file unintentionally. I directed you to computer software and Internet references where creation, modification and access dates can be changed and modified intentionally.

It is obvious how this information (the ease at which intentional and unintentional acts can alter dates on music and computer files) is directly relevant to the question of the infirmity of the "creation date" of the NRG file you are representing was in 1999.

As for my request for preservation of evidence of Mr Pringle's computer files, it remains. Please make sure that the computer files are preserved prior to addressing altered or tampered creation dates.

Responding to your threat of Rule 11 sanctions, please review the Rule. I am not filing anything with a court, but instead bringing a serious matter to your attention before you file something with the Court.

It is you that has indicated an intention to file a complaint based on an alleged claim that is dependent on a computer file date. Based on all the facts and information you have shared with us to date (which you should revisit) there are serious issues of whether that date is actual or fabricated. You now have proven to yourself how easily a fabricated date can be created unintentionally. Since the information Mr Pringle's computers is available to you my view is you have an obligation to preserve evidence and an obligation to determine the fabrication issue before bringing the complaint.

As for keeping a record of time spent and expert time spent investigating your claim pre-filing, I think that is a good thing as it will provide documented records of what was done, and not done, by you pre filing notwithstanding being put on notice of this issue.

As for asserting defenses, why would there be a need to do that? If you want to effect a business consideration of Mr Pringle's business proposal, it is up to him to show, without question, title to the thing he represents he owns. If there are questions about his representations he should have no hesitation in providing answers and clarity. If he does, then you should be suspicious.

Finally, thank you for informing us that Ryan, and not Mr Pringle, made the CD in the orange and purple case. That was not the representation made previously.

Please understand that while Mr Pringle is still able to alter the computer files (intentionally or unintentionally) I am not comfortable sharing my complete basis and thoughts on why the creation date is of concern. Thus you should not interpret my decision, right now, not to provide further information, as anything more than an attempt to preserve evidence.

I look forward to candid dialog in the future.

Kara

On Jul 28, 2010, at 11:53 AM, Ira Gould <gould@igouldlaw.com> wrote:

Kara:

In advance of getting to you answers to some of your questions, as we said we would, I would first like to dispose of the issue of the December 31, 1994 creation date of the CDA file of the dance version of "Take a Dive," which we previously provided to you on the Orange Disc. We have examined this issue, per your request, and it is perfectly clear that it is a false assertion as to what the date means and is thus irrelevant to any issue or matter involving Mr. Pringle's claim. Attached to this email is a short memo that Ryan gave to me explaining his findings and those of our computer expert, who we asked to look at the issue independently.

Looking at this issue, and disproving your assertion, took a combined time of about an hour, including that of the expert. You have often brought up Rule 11 to us, with no restraint or shyness whatsoever, and pressed the issue of making sure that we have done proper due diligence with respect to Mr. Pringle's claim. Not to be cute or amusing, but Rule 11 runs both ways in a case. Putting up a defense knowing that it is factually baseless and knowing the actual truth is a violation of Rule 11. This particular charge is completely bogus and stems from not understanding the nature of the issue and not having someone with even the most basic knowledge of computers examine the issue prior to bringing it to our attention. Similarly, arguing there was no access just to see if someone can prove it, knowing that there was access, there is more than enough circumstantial evidence to prove it, and that the law will presume that there was, is impermissible and subject to sanctions. And the same is true with respect to other assertions being made as to the Pringle matter. So if in the end we cannot settle the Pringle matter and we litigate it and prevail, which we will, we will seek reimbursement from all concerned under Rule 11 where such is appropriate.

You mentioned in your email that this 1994 creation date issue was only "one of many concerns" that you have with Pringle's claim. Please tell us the rest of those concerns so that we may properly address them forthwith and sufficiently prior to our meeting on the 16th so that they do not linger in the air, whether the issue favors your side or ours. If you do not let us know what these other "concerns" are, we will assume that there are none and will not discuss them in any context, with respect to any of the matters, whether before or during the meeting on the 16th. By the 16th, all issues raised by you will have been vetted, revetted and commented on in writing, for your consideration and that of your clients.

Ira Gould

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From: Cengar, Kara [mailto:Kara.Cengar@bryancave.com]
Sent: Friday, July 23, 2010 7:22 PM
To: 'Ira Gould'; 'Ryan Greely'
Cc: Seale, Merili
Subject: Rule 408 Pringle

Ira and Ryan,

I wanted you to know that I appreciated our meeting today.

I also wanted to follow up with you regarding the Pringle matter as I know you intend to soon travel to meet him for the first time. During our meeting you affirmatively represented to me that you would never bring a claim if there were questions about its veracity. Your prior emails indicate your acknowledgement of the reputational harm that could be caused to my clients by the mere filing of a claim (legitimate or not). I share this information with you out of respect for you and Ryan and out of interest in keeping illegitimate claims where they belong.

I thought it was important to provide an example of the concerns I expressed during our meeting today. I also wanted to provide you with one example of why I have legitimate questions over the authenticity of Mr. Pringle's representations regarding the dates of his computer files. There are more examples, but this one should be sufficient. The basis for my concerns and my preservation request that follows is set forth below.

On May 21, 2010 you sent me a letter with several sets of two disc's, each set had a CD in an orange case and a CD in a purple case.

You said in your letter that the CD in the Orange case was the Dance Version of Take a Dive, which was created in 1999. You represented that the CD in the purple case was the "Original Version of Take a Dive" which was copyrighted in 1998. We understand that these disc's were prepared by Mr. Pringle, and sent to you.

In the body of the May 21, 2010 letter you represent that Mr. Pringle wrote the Original Version of Take a Dive in 1997, and the Original Version was copyrighted in 1998.

I attach a pdf of a screen shot of the properties files of set one of the orange disc you sent me. The creation date and the modified date of this orange disc "Take a Dive Dance Version" file is December 31, 1994 at 7:00:02 pm. This is at least 5 years before you represent he allegedly created the Dance Version and three 3 years before he even allegedly wrote the original version of Take a Dive. The orange disc from set 2 of your May 21, 2010 letter has a different creation time. Interestingly, if you copy the file from the orange disc to your desk top, it changes these dates to the following: Created today, with a last modified date of December 31, 1994.

Would you please provide me with an explanation of the 1994 creation date?

I hope you share our genuine concerns regarding the computer files Mr. Pringle is using to try to convince you (and us) that his dates are what he is holding them out to be. I am sure you are aware that there are easy ways for Mr. Pringle to modify the Creation, Accessed and Modified dates of his computer files. There are software programs available on the internet that permit it, and there are articles all over the web with step by step instructions on how to alter these dates.

Since he is an "unsolicited client" from Texas that you have never represented before or met before, I am not sure how you can confront Mr. Pringle with this information without running the risk of him altering or tampering with computer files in the future to try to "fix" things. **Given that you have advanced a claim on his behalf I am sure you**

have already advised Mr. Pringle of his duty to preserve all computer records. Out of caution, before Mr. Pringle is confronted with the topic of potential altered dates etc, it is likely appropriate for you to have an independent forensic computer person image his entire hard drive etc. to capture and preserve everything on his system before you confront him. It will be something we will necessarily request in discovery should this case ever reach a filed action. I leave the preservation mechanism to your choice as long as there is a mechanism put in place to preserve the evidence before he is alerted to concerns over his file dating practices and inconsistencies.

On behalf of my clients', as I am sure you understand, I have to formally make a request for preservation of evidence. Please consider this email my formal request for preservation of evidence.

I am happy to discuss this with you further. I am hopeful that you will be candid with me. Since I am on the road, but still working (sigh), my cell number is the most appropriate way to reach me.

Thanks

Kara

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<1994 Creation Date Memo.pdf>