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## Department of Justice Obtains Guilty Plea for Obstruction in Merger Investigation

OCTOBER 19, 2016

On October 14, the US Department of Justice's Antitrust Division announced that Ralph Groen, a former information technology executive of the bus operator Coach USA Inc., had pleaded guilty to criminally obstructing justice during a civil antitrust investigation and litigation. The case serves as a stark reminder that attempting to destroy or hide responsive materials from government investigators can bring severe personal consequences for those engaging in such misconduct. It also illustrates that the government is serious when it asks for information about backup data, or for the backup data itself.

**Facts.** Coach USA's Gray Line subsidiary operates "hop-on, hop-off" tour buses in various cities, including New York. In 2009, Gray Line entered into a joint venture agreement with its primary competitor in New York which, the Antitrust Division and the state of New York later alleged, effectively eliminated substantial competition in "hop-on, hop-off" bus services in New York. The division opened an investigation of the joint venture soon after it was created and demanded production of documents relating to the joint venture. In August 2009, Coach USA issued a document preservation notice to its management, including Mr. Groen, its vice president of information technology.

In December 2012, the division and the state of New York filed a civil antitrust case against Coach USA and its joint venture partner alleging that the formation of the joint venture violated federal and state antitrust laws. During discovery for that litigation, the division issued document demands in March and June 2013. In the [Information](#) filed against Mr. Groen, the division alleged that in June 2013, while Coach USA's outside counsel was attempting to gather documents responsive to the division's requests, Mr. Groen instructed one or more of his employees to conceal and destroy backup tapes that contained relevant documents. The Information asserts that Mr. Groen's employees recalled the relevant backup tapes from storage and concealed them.

The Information also asserts that Mr. Groen lied to Coach USA's counsel by claiming that the backup tapes did not exist and misrepresenting the procedures for backing up Coach USA's systems. Further, in September 2013, during a sworn deposition, Mr. Groen allegedly provided false

testimony about Coach USA's document retention policies and procedures.

In all, the Information asserts that Mr. Groen concealed documents responsive to government document requests, testified falsely during a sworn deposition, and lied to outside counsel about the existence of responsive documents, all in violation of 18 U.S.C. § 1512(c)(2), which can be punished by a fine and a jail term of up to 20 years.

**Implications.** With the explosive growth of information stored electronically, counsel and company officials depend on information technology professionals to assist in responding to government demands for documents and data. This case serves as a reminder that those IT professionals put themselves and potentially their employers and subordinates at real risk if they do not act honestly and forthrightly in assisting with responses to government information requests. It is also important for both inside and outside counsel to have sufficient knowledge of electronic storage systems to ask IT personnel all questions necessary to ensure production of all available responsive materials or to retain experts who can assume that role. IT personnel and their supervisors should be reminded of the serious consequences that can result if there is any effort at subterfuge.

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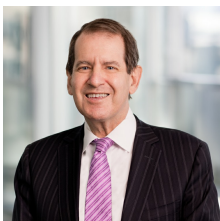


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