Compulife Software Inc. v. Newman

The Simplified Retelling of *Compulife Software Inc. v. Newman*, 959 F.3d 1288 (11th Cir. 2020) — *Warning: This gets pretty dense (and difficult) pretty quickly.*
• Beware of the “Rothman Way”
  • Is it really the “easier route?”
  • Do all signs really point in that direction?
  • Are your enemies hiding in the trees waiting to pounce?
  • Will your trial judge rule (incorrectly) and then retire?
  • Will your district judge be too busy to bother with your case?

• Thank you Jim Matulis and Sam Lewis
What do we want from this CLE?

• Legal Issues on appeal overview?
  • Copyright Law:
    • Factual copying vs legal copying
    • Burdens
    • Filtration
    • Quantity/quality based on copyrighted work
    • Detailed findings required under Rule 52
  • Trade Secret Law:
    • Improper means
    • Misappropriation by use
    • Misappropriation of the whole

• Procedure and Practice overview?
  • Discovery in the age of “truthiness”
  • Confronting witnesses with multiple personality disorder
  • Hard cases make judges do strange things
  • How to cross examine by zoom?
Overview

• Procedural History
  • First Case: Compulife Software v. Rutstein (filed 5/23/2016)
  • Second Case: Compulife Software v. Newman (filed 12/2/2016)
  • Third Case: Compulife Software v. NAAIP members, et al. (filed 12/2/2016)
  • Fourth Case: Compulife Software v. One Resource Group (filed 4/21/2017)

• Trials and Appeal
  • First Trial: 10/3-7/2017
  • Evidentiary Hearing after Trial: 1/24/2018
  • Decision from First Trial: 3/12/2018
  • 11th Circuit’s Reversal: 6/18/2020
  • Second Trial: 11/16/2020
First Trial: Magistrate Judge James Hopkins

Prior to assuming the bench Judge Hopkins was an Assistant United States Attorney in the Southern District of Florida and a Special Assistant United States Attorney in the Southern District of New York. He specialized in fraud and public corruption cases. He convicted a Palm Beach County jeweler and his lawyer/money launderer in a $90 million scheme to defraud Jack Nicklaus, Greg Norman and others and launder the proceeds through the Isle of Man, England, Luxembourg, France, the Bahamas and South America. He was responsible for the freezing of $20 million in Paris, the first time the French authorities froze and repatriated fraud proceeds at the request of the United States. He also successfully prosecuted a long-time Broward County Democratic Chairman and Presidential appointee to the Fannie Mae board, as well as the lawyer that served as the middle man for his bribes. Earlier in his career Judge Hopkins was Inspector General of the New York City Department of Environmental Protection, an Assistant Commissioner in charge of twelve Inspector General Offices, and a New York State Special Assistant Attorney General prosecuting police and judicial corruption. Judge Hopkins has a bachelor's degree in Mathematics from Fordham University, where he was a computer programmer in the early 1970s.
Kevin C. Newsom, Circuit Judge

A native of Birmingham, Alabama, Newsom earned his bachelor's degree, summa cum laude, from Samford University in 1994. He graduated first in his class from Samford University. Newsom earned his J.D. from Harvard Law School, magna cum laude, in 1997. During a period of his legal studies, Newsom was articles editor of the Harvard Law Review.
Magistrate Judge Bruce E. Reinhardt

Prior to taking the bench, he was in private practice for 10 years, both as a solo practitioner and as the co-chair of the white collar crime practice group of a national firm. His practice focused on white collar criminal defense and complex civil litigation. From 1996-2008, he was an Assistant U.S. Attorney in West Palm Beach. From 1988-1996, he was a Trial Attorney in the Public Integrity Section of the U.S. Department of Justice, having entered the Department as part of the Attorney General's Honors Program. He began his legal career as the law clerk to the Honorable Norma L. Shapiro on the U.S. District Court for the Eastern District of Pennsylvania. Judge Reinhart earned a degree in civil engineering cum laude from Princeton University in 1984 and a J.D. cum laude in 1987 from the University of Pennsylvania Law School.
District Judge Robin L. Rosenberg

Rosenberg received a Bachelor of Arts degree in 1983 from Princeton University. She received a Master of Arts degree and Juris Doctor in 1989 from Duke University and Duke University School of Law. She began her legal career as a law clerk to Judge James C. Paine of the United States District Court for the Southern District of Florida from 1989 to 1990. She served as a Trial Attorney in the Civil Rights Division of the United States Department of Justice from 1990 to 1994. While on leave from that position, she worked at a non profit organization in the Czech Republic from 1993 to 1994. She was an associate at the law firm of Foley & Lardner from 1994 to 1995. She served as an Assistant City Attorney for the City of West Palm Beach, Florida, from 1995 to 1997. She was a partner at Holland & Knight LLP, from 1997 to 1999. She served as Vice President and General Counsel at the Slim Fast Foods Company from 1999 to 2001. She was a partner at the law firm of Rosenberg & McAuliffe, PL, from 2001 to 2006, and concurrently managed ARC Mediation, a full service dispute resolution firm, from 2002 to 2006. From 2007–2014, she was a Circuit Court Judge in the Fifteenth Judicial Circuit.
Compulife Software

- Founded in 1982
- Life insurance comparison and quotation software
  - www.compulife.com
  - www.term4sale.com
- PC version
- Internet engine version
  - Both use click through agreements with strong © and ts protection language

Robert Barney, Founder and CEO
April 2017, Ft. Wayne, Indiana
Create Your Stunning Website with Quote Engines in Seconds. It's Easy. It's Free.

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NAAIP has revolutionized website building for the insurance industry. One option is to spend thousands on an inferior product. Or a do-it-yourself template that is not insurance specific. We have created the perfect solution for your business.
Meet the Team?

David Gordon – Founder/President

Nathanfield Goldwater – President

Jack Hudson – Content Manager

Ari Eisenstein – Chief Developer

Nitin Patel – Chief Developer

Shlomo Schwartz – 2nd Developer

Benjamin Lipton – Chief Designer

Nathanfield Goldwater – President

Nathanfield graduated from the University of London (UCL) with a Bachelor’s degree in Economics in 1986. He then received his Master’s in Management of International Companies from LSE, which he completed in 1988.

Nate Golden – Marketing Manager

Ari Eisenstein – Chief Developer

Nathanfield Goldwater – President

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What do we want?

Quote engines!
Why do we want them?

To sell insurance policies!
And what happens when NAAIP agents sell policies?

NAAIP makes override commissions!
The National Association of Accredited Insurance Professionals

David Gordon? Or David Rutstein?
Eleventh Circuit Vacates Insurance Database Hacking Case

There has been a welcome development in this ongoing story, which you can read about here:

Eleventh Circuit Decision
Eleventh Circuit Opinion

David Rutstein Loses Insurance Licenses

The following numbered paragraphs are taken from this court decision's finding of facts:

FINDINGS OF FACT AND CONCLUSIONS OF LAW, March 12, 2018
Discovery in the Age of Truthiness

DEFENDANTS BINYOMIN RUTSTEIN AND DAVID RUTSTEIN’S CERTIFICATION AS TO DISCOVERY PURSUANT TO COURT ORDER

Defendants, BINYOMIN RUTSTEIN and DAVID RUTSTEIN, file this their certification that they have provided all known information for Moses Newman and Aaron Levy and that they have provided each and every document responsive to Plaintiff’s Request for Production and are not in possession of any additional responsive documents. Further, should Defendants locate any additional responsive documents they are not presently in possession of, Defendants shall produce those to Plaintiff forthwith.

This certification is executed personally by Defendants under the penalty of perjury.

BINYOMIN RUTSTEIN

[Signature]

DAVID RUTSTEIN

[Signature]

The address and contact information comes from David Rutstein - Binyomin has no idea where they live.

Binyomin Rutstein has received a few thousand of dollars of override commissions from a few insurance companies - he will gather that Aaron Levy lives at 113 Agrippas Street, apt 20 - Jerusalem Israel - email aaron@naaip.org +972-54-738-3497

Moses Newman lives at Illinois Lane 5 Mez Tzion, Israel - email moses@naaip.org +972 54-902-5204

Binyomin has no information on anything related to NAAIP software or website. David has no information related to NAAIP software or website.
Defense calls David Rutstein.

DAVID RUTSTEIN

DIRECT EXAMINATION

BY MS. FRIEDMAN:

Q. Mr. Rutstein, why did you lie at your deposition and say you had no involvement with naaip.org back in November of 2015?

A. It was not smart. It was dumb. It was -- I apologize.

THE COURT: That's not responsive.
8. At no time was I ever advised that the data feed was coming from a third party.

9. At no time did I ever enter into a licensing agreement or any agreement restricting use of the data feed.

10. In April of 2012, my insurance license was revoked and Aaron took over control of www.naaiip.org and www.beyondquotes.com. At that time, I requested that Aaron update the website registrations.

11. Aaron Levy is a real person residing at 113 Agripas Street, Apt. 20 in Jerusalem Israel. That same information was provided to Plaintiff on December 15, 2016.

I declare under the penalty of perjury that the foregoing is true and correct.

DATE: February 6, 2017

[Signature]

David Rutstein
...and denied
And at trial...

Q. In response to the first and second questions that were asked of you on direct yesterday, do I understand correctly that you are essentially recanting your deposition testimony?

A. For the most part.

Q. For the most part.

Are you recanting it in its entirety?

A. I don't have -- I don't have all the words in front of me, but yesterday when --

Q. The question was just are you recanting it in its entirety.

A. I would not --
And this is getting weird...

THE COURT: Court reporter, were you able to pick up what the defendant just said under his breath?
THE COURT REPORTER: I did not hear him.
THE COURT: If you are going to say something, say it so it can be heard.
May the record reflect that the defendant at various times has been what can best be described as muttering under his breath, sometimes audible, sometimes barely audible, oftentimes barely audible.
Go ahead.
MR. ROTHMAN: Thank you.
THE COURT: He is continuing to do it.

THE COURT: May the record reflect that the defendant is continuing to mutter under his breath.
A. I don't -- if -- am I allowed to --
Q. It's a yes-or-no question.
THE COURT: Hold on a second.
Madam court reporter, were you able to hear what he was muttering?
THE COURT REPORTER: Yes, Judge.
THE COURT: May the record reflect that the defendant was muttering responses that were barely audible, but apparently audible enough to be picked up by the court reporter.
You may continue.
Showing up is easier on zoom...

THE COURT: The clock here says it's 10:14 a.m. and I have been waiting here. Counselor, why weren't you here ready to go at 10:00 o'clock?

MS. FRIEDMAN: Your Honor, I had an issue with one of my children this morning that delayed me ten minutes and when I got here, I ran to the bathroom. I walked into the courthouse at 10:03 a.m. They checked me downstairs, because I carry two phones. My belt and my shoes buzzed for, again, the fourth day in a row, and they checked that. And by the time I got up here I ran to the bathroom. I called your chambers and told them that I was running ten minutes late because I anticipated the ten-minute delay in getting up. I know how long it takes me to get from the parking lot here, and I was running late.

THE COURT: It's the fourth day in a row. You should anticipate that it's going to take you some time to get through security. I haven't heard anything that is unanticipated and, as I recall, you were approximately a half hour late the first day of trial. Correct?

MS. FRIEDMAN: Yes. There were a number of accidents, one of which Mr. Rothman's law clerk was involved in, on the way up here.

THE COURT: This is in the wake of me yesterday lecturing you on wasting everybody's time, and I would think that the least you could do given your record in this case is to be here on time today.

I postponed starting trial until 10:00 o'clock at your request and you still can't make it here in time to start at 10:00 o'clock. You caused us a delay of some 14 minutes. It's 14 minutes of everybody's time.
BARNEY
BRUNER
KUHN
MIRACLE
McSWENEY (TR)
STEINHARDT (TR)
WILSON (TR)

BACKGROUND: 4/16 EVENTS; INVESTIGATION METHODS; STEWARDSHIP; McSWENEY; NAAIP; ORG QUOTES; THEN START NAAIP, ORG COPY INCLUIDED, SCRAPE; DAMAGE QUOTE & RATES

AUTHORED CODES, HTML ORIGINAL CREATORS' CODES TAKEN O & Q, NAAIP ORG ID MESS, @ SCRAPE; 4 HOURS TO INVESTIGATE & FIX

IMPROPER MEANS - FALSE PRETENSES & DAMAGE:
① USERS LOST; ② LICENCE FEES LOST; ③ EVIDENCE TO INVESTIGATE

EXPERT: VALIDITY OF ①, COPYING OF ②, TS PROTECTION AND ACQUISITION USE

GAVE AS UNWITTING ACCESS TO CL'S TS; VIOLATED CL LICENSING AGREEMENT.

GAVE AS UNWITTING ACCESS; WHEN AS CUT OFF IT STOPPED WORKING

PAID AS SPLIT COMMISSIONS ON SALES MADE USING CL'S IP
Expert Nancy Miracle...
Compulife Software Inc. v. Newman

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