Court Ruling Allows Data Breach Suit Against Neiman Marcus to Move Forward

July 31, 2015 â€“ The US Seventh Circuit Court of Appeals has reversed a lower court ruling and given â€œstandingâ€• to viciti of Nieman Marcusâ€™ data breach. The ruling is important because the lower court had ruled that simply having your data exposed in a data breach was not an injury in the courtâ€™s eyes. Therefore, before you could sue for having your data exposed, you had to prove that you had suffered an actual financial loss. Moreover, you had to be able to show that the loss you suffered was as a direct result of the data breach; a standard that was almost impossible to reach.

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var s = document.createElement('SCRIPT'), s1 = document.getElementsByTagName('SCRIPT')[0];
s.type = 'text/javascript';
s.src = 'http://widgets.digg.com/buttons.js';
s1.parentNode.insertBefore(s, s1);
})();
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    var po = document.createElement('script'); po.type = 'text/javascript'; po.async = true;
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  })();
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The class action suit alleges that the plaintiffs in the case have sustained an injury even if they have not sustained any financial damages yet. Part of that injury is an increased risk of fraud and identity theft. The court agreed. In a written rulling the court said, â€œthe Neiman Marcus customers should not have to wait until hackers commit identity theft or credit-card fraud in order to give the class standing, because there is an â€˜objective reasonable likelihoodâ€™ that such an injury will occur.â€•

The rulling also stated that the presumed purpose of hacking Neiman Marcusâ€™ computer system and stealing customer data was to commit fraud; whether immediate or at a later date. It went on to state that because of the breach, the plaintiffs had been forced to take steps to protect their identities and their credit and that the costs associated with these efforts were an actual financial injury, giving them standing to file suit.

The ruling is important because it will likely influence rulings in similar cases in other federal circuits. It is also a shot across the bow of companies that maintain large online databases of consumer information. It means that these companies wonâ€™t be able to claim that their customers havenâ€™t been hurt by data breaches if they havenâ€™t suffered a financial loss.
byJim Malmberg
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