2013 Barnes And Noble Data Breach Lawsuit Reinstated by 7th Circuit Court of Appeals, Butâ€¦

April 19, 2018 - The US Court of Appeals for the 7th Circuit has revived data breach lawsuit against Barnes & Noble. The case had been dismissed on three separate occasions, by different judges, largely because the courts had determined that the supposed victims had suffered no financial losses and therefore, they didn't have standing to sue. But the Appeals Court disagreed even though the judges hearing the case expressed serious doubts that the plaintiffs in the case would win.

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The case stems from a credit card skimming scam that affected 63 Barnes & Noble stores in nine states. Credit card skimming is a means by which thieves steel the information encoded in credit card magnetic strips. In this case, the people behind the scam managed to tamper with point-of-sale credit card readers located in Barnes & Noble stores. Customers became victims simply by swiping their credit cards through the readers; thus giving the thieves' access to all of the data stored in the magnetic strip on the card.

In 2013, a class action suit was filed against the company. The plaintiffs claimed that they had damages because they were forced to pay for credit monitoring, had to spend their own time talking to banks and credit bureaus to avoid identity theft and that they had also had phone bills associated with the calls they had to make as a result of the incident. The lower courts had determined that these were not sufficient to give them standing to sue.

But a 3-0 decision by the Appeals Court reversed those determinations. The judges determined that victims of the scam faced a significant risk of identity theft and that the cost for services to avoid this fate was sufficient to give them standing. But the "win" may be short lived.

In the courts decision the judges noted that because the nine states involved all have differing laws regarding data breaches, there were dissimilarities between the plaintiffs in the case that may be significant enough that the suit can't be considered a class-action. They also noted that it isn't clear the plaintiffs can prevail on the merits of the case because none of the state laws that are in effect make "merchants liable for failure to crime-proof their point-of-sale systems." Finally, the court noted that the plaintiffs may have trouble collecting on their claim because Barnes & Noble was also a "victim" in this incident.

The words of the court indicate that class action lawsuits for data breaches may face some difficult challenges going forward. Each of the federal court circuits is taking its own approach to the issues in this case. And some of those issues are likely to wind up in front of the Supreme Court at some point for final disposition.
byJim Malmberg
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