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Protected In Part Means Fully Exposed

a mock hearing

SESSION ID: LAW-T07

Honorable John M. Facciola
U.S. Magistrate Judge
U.S. District Court for the District of Columbia

Honorable Andrew J. Peck
U.S. Magistrate Judge
U.S. District Court for the Southern District of New York

Steven W. Teppler, *Esquire*
Abbott Law Group, P.A..

Jay Brudz, *Esquire*
Drinker Biddle & Reath LLP.

Hoyt L. Kesterson II
Terra Verde
.
Carlos A. Villalba
Terra Verde

Agenda for the mock hearing

We lay our scene

Call to order

Summary of additional facts and testimony

Legal argument

Decision and commentary by Judge Facciola

TAXESRUS is where we lay our scene

- Taxes R Us is a large tax preparation company.
  - It helps customers complete and files tax forms.
    - It will file the forms with the appropriate agencies as well as electronically transfer funds to cover taxes that are due.
    - It stores the completed tax forms for an extended and indefinite period.
  - It collect credit card information from customers in payment for services and to pay for taxes due .
    - It stores the credit card information for an extended and indefinite time.
  - It has undergone PCI DSS audits for the last three years.
  - The audit only covers 25% of Taxes R Us.

Miscreants Enter *stage left*

- An employee, Viola Orsino, clicks on a link in an email. That link loaded malware into Viola's computer.
- The malware lifted Viola's ID and password and sent them outside of Taxes R Us to Malvolio, a hacker of ill repute.
- Malvio uses Viola's single-factor credentials to remotely login into Viola's workstation—the nose of the camel.
- Compromise by compromise Malvolia reconnoitered the systems of Taxes R Us.
- Malvolvio escalates his account's privileges on several servers.
- He now has access to a number of files and databases.

Data Exits *stage right*

- Malvalio copies the files to an internal server that has adequate storage and is often nearly idle.
- He concatenates and segments the files into transmittable files; he compresses and encrypts the files.
- The files are moved to a server that can get through the firewall between the server and the Internet.
- Using file transfer, the files are sent to systems accessible by Malvalio.
- From there the trail is lost.

Lawyers Appear *center stage*

- Olivia Illyria lost the chance to acquire a house below market value, failed to get a new job because the background check reveled significant non-payment of loans, and had her income tax refund misdirected.
- She engaged the services of Dewey, Cheatem, & Howe to seek damages.
- DC&H filed a class action lawsuit against Taxes R US in federal court in the Northern District of California claiming that the company was negligent in that it did not protect Social Security Numbers and bank account information in the manner that credit card numbers were protected.
- The class meets the numerosity, commonality, typicality, and adequate representation requirements.

Everything is illuminated

- A 26(f) meet and confer agrees that the system audit trail will be provided to plaintiff's expert.
- Forensic examination reveals an Advanced Persistent Threat compromised the systems of Taxes R Us for a period of two months during which
  - files containing encrypted credit card numbers were exfiltrated, and
  - files containing the plaintext of SSNs and bank account numbers were exfiltrated.
- The SSN and bank account information appear for sale on Silk Road; the credit card numbers never surface.
- Defendant states that they follow standard business practice
- Plaintiff argues that there is a heightened duty of care because the PCI audit process made Taxes R Us aware of threats and countermeasures.
- Plaintiff's and defendant's counsel each file a motion for summary judgment.

Dramatis Personæ

- United States Magistrate Judge John M. Facciola
  - Sitting by designation
- Steven W. Teppler, *Esquire*
  - Retained counsel for Olivia Illyria et al
- Carlos A. Villalba
  - An expert on information security retained by plaintiff counsel
- Jay Brudz, *Esquire*
  - Retained counsel for Taxes R Us
- Hoyt L. Kesterson II
  - CIO for Taxes R Us, a fact witness
- United States Magistrate Judge Andrew J. Peck
  - Greek Chorus

Oyez!

Oyez!

Oyez!

Post hearing discussion with Judge Facciola

- Discussion with the judge's law clerks—what should the instructions to the jury be?
- Judge Facciola's instructions

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