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Class-Action Lawyers Hope Target Is a Bull's-Eye

By Randy J. Maniloff

As day follows night, the retailer Target has been sued for a parade of horrors allegedly caused by the theft of certain personal information from the magnetic strips of its customers' credit and debit cards. The theft allegedly occurred between Nov. 27 and Dec. 15 when customers' cards were swiped through the retailer's point-of-sale terminals.

As of year-end, about 40 suits seeking class-action status have been filed against Target in federal courts around the country. Seven were filed on Dec. 19, the same day the company disclosed the data breach. For some plaintiffs' lawyers this was the Black Friday door buster to end all others.

The Target story seems poised to have a familiar ending. A large company commits or is accused of an infraction that causes, at worst, negligible harm but is widely publicized. Enter the buzzards.

Suits seeking class-action status are filed. The offending company seeks to prevent harm to its reputation—a drain on company resources—as well as eliminate a cloud hanging over its financial reports. So sometime after the suits are filed, and the foot-fault has been forgotten (by those who even knew they were supposedly injured), a settlement is reached. The class members get enough for a latte, and the lawyers pocket an amount that could buy half of Brazil.

Dozens of complaints have been filed—seven of them on the same day the retail chain revealed a data breach.

To be sure, class actions are challenging for attorneys to bring. But when they succeed, especially in the consumer context, the attorneys are the real winners. That's because they are the real plaintiffs in such cases.

The sue-first, investigate-the-facts-later complaints against Target read like the table of contents of a torts book. The retailer allegedly committed negligence, fraud, breach of contract, breach of fiduciary duty, invasion of privacy and conversion. Some class-action plaintiffs allege that they were taken advantage of by Target by shopping in stores that had slipshod security.

In addition, Target also allegedly violated a slew of state statutes concerning consumer protection and data breaches. These types of statutes often allow for an award of attorney's fees in addition to any damages owed. The complaints allege that Target's actions—some calling it fraudulent and deceptive and willful—caused a host of damages.

But did they? The plaintiffs in the class actions seek damages for the financial losses due to unauthorized charges on their credit and debit cards. But Target's website states: "You have zero liability for any charges that you didn't make."

There's no ambiguity there. No Target customer will be picking up any bar tabs in Nigeria.

Class-action plaintiffs also demand that they be provided with credit-monitoring services. Target already has stated that it will offer free credit monitoring to everyone who was affected by the security breach. The company didn't need to be forced by any court to offer this service.

Some plaintiffs are seeking punitive damages from Target. Punitive damages are awarded for conduct that resembles criminal behavior. They are saved for conduct that is the worst of the worst. It may turn out that Target could have done something to prevent the data breach from taking place. But it is hard to imagine that any ball that it dropped could justify punitive damages. Most reasonable people would stop shopping in any store that committed an act against them that justified punitive damages. But I suspect that the plaintiffs in these lawsuits have not paid their last visit to a Target store.

The plaintiffs in these lawsuits are understandably concerned about the risk of identity theft. Yet Target has stated that Social Security numbers were not compromised. Thus, the risk of identity theft is not as great as it may seem.

Will some Target customers be inconvenienced by all of this? Sure. It can be a pain to get unauthorized charges reversed. And getting a new debit or credit card can be a hassle because of the need to change automatic charges. But when all is said and done, it is unlikely that consumers who shopped at Target during the breach period will suffer any out-of-pocket losses.

Some class-action plaintiffs allege that they were taken advantage of by Target. But the only ones taking advantage of them are their lawyers.

Mr. Maniloff is an attorney at the law firm White and Williams LLP in Philadelphia. He also runs the insurance law website Coverage-opinions.info.