

## DATA SECURITY & PRIVACY ALERT

### TRIAL COURT HOLDS THAT UNDER PENNSYLVANIA LAW, PLAINTIFFS CANNOT CLAIM NEGLIGENCE AS A RESULT OF A DATA BREACH

On May 28, 2015, Judge R. Stanton Wettick Jr. of the Court of Common Pleas of Allegheny County dismissed a class action suit where current and former employees of a large hospital system claimed that their employer was negligent in failing to implement the proper controls and security systems to prevent a data breach that compromised thousands of records, including the employee's "highly confidential personal and financial information."

Plaintiffs had alleged that the employer had a duty to exercise reasonable care to protect and secure the sensitive information within its possession or control from being compromised, lost, stolen, misused, and/or disclosed to unauthorized parties. As a result of the breach of this alleged duty, the plaintiffs claimed damages related to "fraudulently filed tax returns" and "an increased and imminent risk of becoming victims of identity theft crimes, fraud, and abuse."

In rejecting the plaintiffs' claims, Wettick observed, contrary to a few decisions from other jurisdictions, that under Pennsylvania's economic loss doctrine, no cause of action exists for negligence that results solely in economic loss (or the risk thereof) that is unaccompanied by physical injury or property damage. Therefore, without the requisite physical injury or property damage, the plaintiffs' claims must be dismissed.

In addition, Wettick further declined to recognize the plaintiffs' claims on public policy grounds. He noted that fashioning a remedy under these circumstances would be a matter for the Legislature, and at this point, the Pennsylvania General Assembly has only chosen to enact legislation which requires an entity to provide notice that it has suffered a data breach, not be exposed to any kind of civil liability.

This decision is significant because it delineates a very clear line of standing and the pursuit of damages under a common fact pattern in the still-evolving and unsettled area of data breach law. A number of other courts have dismissed data breach class action claims, typically on the basis that a mere increased threat of future harm is too speculative to confer standing. The *Dittman* decision goes a step further by indicating that even if a plaintiff could demonstrate some type of actual, present harm resulting from the breach, he would not have a sustainable claim for negligence under Pennsylvania law.

The case is *Dittman v. UPMC*, No. GD-14-003285, Allegheny County Court of Common Pleas, May 28, 2015).

*This Data Security & Privacy Alert is intended to keep readers current on developments in the data security & privacy world and in the law, and is not intended to be legal advice. If you have any questions, please call Sandy B. Garfinkel, Chair of the firm's Data Security & Privacy Group, at 412-566-6868.*

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