

When A Data Breach Becomes Your Burden

By Aaron A. Hessler, Esq.

While the media often focus coverage on cyber attacks upon large companies, cyber-criminals do not solely target big businesses. In 2015, almost 50% of the reported or discovered cyber-attacks were targeted at businesses with less than 250 employees. Cyber-criminals view small business as relatively easy targets compared to large companies who have begun to significantly improve their cybersecurity defenses and response procedures.

Aside from any damage directly inflicted upon a company by a cyber-criminal, a cyber-attack breach can also cause significant, indirect, and long lasting financial and reputational damage to the company. For example, in 2014, after Target's massive data breach, Target's profits fell 40% in the next quarter, and its stock price fell almost 55%, as relative to the previous year. In addition to decreased revenue, there are reputational damages and the costs incurred in responding to a cybersecurity breach. As demonstrated by the U.S. Sixth Circuit Court of Appeals' recent decision in *Galaria v. Nationwide Mutual Insurance Co.*, a company that

has suffered a cybersecurity attack may potentially be sued in a class-action lawsuit.

Prior to the *Galaria* decision, courts had generally determined that companies could not be sued in class-actions for losing customer information as a result of a cyber-attack because, in the data breach context, an individual customer whose information is compromised is not sufficiently injured by the data breach unless the cyber-criminal actually uses the customer's stolen information. Because only a fraction of the stolen information is actually utilized against customers, courts have generally not allowed class-actions in data breach cases.

In its decision in *Galaria*, the Court focused upon the potential harm to a customer resulting from a data breach rather than any actual or immediate injury to the customer. The Court's reasoning is based upon the premise that a cyber-criminal would not steal the information if he or she did not intend to use it. The Court concluded that, "Why else would hackers break into a store's database and steal

customers' private information? Presumably the purpose of the hack is, sooner or later, to make a fraudulent charge or assume those consumers' identities."

As a result of the *Galaria* decision, the Sixth Circuit Court of Appeals has essentially opened the door for class-action lawsuits against companies (both large and small) that have suffered a cybersecurity attack if customer information has been compromised as a result of the attack. Therefore, it is imperative that companies, both large and small, develop plans for dealing with cyber attacks and resulting data breach issues. If you have any questions or concerns regarding how to protect your business from a cybersecurity attack and/or how to respond to a data breach including mitigating risk and potential losses, please contact Attorney **Angela M. Lavin** in our Cybersecurity Practice Group at :

amlavin@wegmanlaw.com

To read the full article,
please visit our website:
www.wegmanlaw.com

Notable News

Richard T. Coyne was awarded the prestigious Workers Achievement Award in recognition of his contribution to the work of Trial Attorneys of America. In addition, Attorney Coyne recently addressed the American Society for Quality. The subject matter was "Best Practices: When an Accusatory Finger is Pointed at a Manufacturer's Design and Quality Assurance Team."

Jason A. Worgull and **David A. Resser** recently presented a program entitled "International Intellectual Property Protection and Strategies" at a Continuing Legal Education program sponsored by the Cleveland Metropolitan Bar Association.

Robert W. McIntyre and **Jay R. Carson** successfully represented a local machine tool technology company in a matter in-

volving the theft of the client's trade secrets by a multi-national competitor. Shortly after suit was filed, the competitor agreed to not only destroy and never otherwise use any information it may have obtained by questionable means, but also agreed to pay all of our client's legal fees and expenses.

Wegman Hessler & Vanderburg was recently recognized in Crain's Cleveland Business as one of the thirty largest law firms in Northeast Ohio.

Aaron A. Hessler recently joined the firm as an associate in the Litigation Department. Aaron graduated from The Ohio State University Moritz College of Law on May 13, 2016, successfully sat for the Ohio State Bar Exam in July 2016, and was sworn in to the Ohio State Bar on November 7, 2016.

Jessica L. MacKeigan has joined the firm as an associate in the Litigation Department. Jessica is a 2010 graduate of the Cleveland Marshall College of Law. Before entering private practice, Jessica was a Judicial Law Clerk and Staff Attorney in the U.S. District Court for the Northern District of Ohio.

We are pleased to welcome the following employees to the **Wegman, Hessler & Vanderburg** team:

- ◆ Lesley Newman - Receptionist
- ◆ Karen Gerard - Paralegal in the Estate Planning Department
- ◆ Alisa Adams - Paralegal in the Litigation Group.

We are proud to announce that our employees raised over \$800 during a Veteran's Day fundraiser for the benefit of "Homes for Our Troops".