

Legal Update

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SEVENTH CIRCUIT ALLOWS DATA BREACH CASE TO PROCEED

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Companies are aware of the potential risks and costs associated with data breaches. But when courts ease the burdens on plaintiffs to bring private lawsuits for a data breach, companies must take note of the increased risk. Earlier this month, in *Dieffenbach v. Barnes & Noble*, the Seventh Circuit Court of Appeals reaffirmed that consumers whose data is stolen can sue companies that lost the data. The issue was whether the plaintiffs had adequately described their damages and why they were entitled to them under California and Illinois state law. The court found that they had.

The Seventh Circuit held that asserting lost access to a bank account for just three days was sufficient to entitle a plaintiff to claim damages under California law. The court also noted that time and paperwork costs to remedy the data loss could justify an award of damages. The court further held that, under Illinois law, the plaintiff's debit card being deactivated for a period of time and the renewal of credit monitoring services as a result of the breach could entitle a consumer to recover damages.

The Seventh Circuit did note, however, that it was not deciding the merits of the suit and expressed doubt over whether plaintiffs could ultimately prevail and whether the plaintiffs could succeed in certifying the classes proposed. The Seventh Circuit's decision, nonetheless, is a stark reminder that companies need to continually review, update, and monitor their data protection policies and procedures, and that breach response preparedness is critical. Companies should follow a number of best practices on a regular basis to protect against data breaches, and the lawsuits that can result, including:

- Review and update data protection policies and procedures;
- Train, and re-train, employees on data security best practices;
- Practice the company data breach response plan;
- Review insurance policies that cover data security and data breach; and
- Audit and update hardware and software used to protect data.

Legal counsel with experience in this area can help you keep your policies, procedures, technology, and insurance up to date and consistent with your business practices and needs.

FVLD publishes updates on legal issues and summaries of legal topics for its clients and friends. They are merely informational and do not constitute legal advice. We welcome comments or questions. If we can be of assistance, please call or write Peter T. Berk 312.701.6870, pberk@fvldlaw.com, Twitter: [@BerkPeter](https://twitter.com/BerkPeter), LinkedIn: www.linkedin.com/in/pberk, or your regular FVLD contact.

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