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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

7th Circ. Revives Barnes & Noble Security Breach Suit

By **Rachel Graf**

Law360 (April 11, 2018, 7:14 PM EDT) -- The Seventh Circuit on Wednesday revived a proposed class action alleging Barnes & Noble Inc. failed to secure customers' financial data during a 2012 security breach, finding the customers sufficiently alleged economic damages in the form of security costs and lost time.



A three-judge panel said an Illinois federal court evaluated the Barnes & Noble customers' complaint based on state rather than federal rules when it dismissed their claims for failing to allege economic damages. (AP)

A three-judge panel said an Illinois federal court evaluated the customers' complaint based on state rather than federal rules when it **dismissed** their claims for failing to allege economic damages. The customers adequately alleged injuries including money spent on credit-monitoring services and time spent "to set things straight," which is all that is required under federal rules, the panel said.

"These injuries can justify money damages, just as they support standing," the appellate court said.

The panel sent the proceedings back to the lower court, which will decide issues such as whether Barnes & Noble violated state laws and whether the proposed class should be certified. Much like its customers, Barnes & Noble was also a victim of the security breach, and it is unclear whether a fellow victim can owe damages, the appellate court said.

"All we hold today is that the complaint cannot be dismissed on the ground that the plaintiffs do not adequately allege compensable damages," the panel said.

The customers' counsel, Ben Barnow of Barnow and Associates, said they are pleased with the ruling, calling it "an important decision in data breach law."

The suit was first **filed** in October 2012, just days after Barnes & Noble announced that a hacking operation it learned of a month prior had impacted stores in New York, Pennsylvania, California, New Jersey, Connecticut, Florida, Illinois, Massachusetts and Rhode Island.

Barnes & Noble breached its contractual obligations by failing to provide adequate data security and violated state consumer fraud laws by failing to adequately notify each of its affected customers about the breach in a timely manner, the suit said.

The allegations were dismissed without prejudice twice before they were tossed for a third and final time in June. U.S. District Judge Andrea R. Wood determined that prior court ruling had established economic damages must be alleged to state a claim, and the injuries alleged by the lead plaintiffs were not actual economic injuries.

Counsel for Barnes & Noble didn't respond Wednesday to a request for comment.

U.S Circuit Judges Diane P. Wood, Frank H. Easterbrook and David F. Hamilton sat on the panel for the Seventh Circuit.

The customers are represented by Ben Barnow of Barnow and Associates and Joseph J. Siprut of Siprut PC.

Barnes & Noble is represented by Kenneth L. Chernof of Arnold & Porter Kaye Scholer LLP.

The case is Heather Dieffenbach et al. v. Barnes & Noble Inc., case number 17-2408, in the U.S. Court of Appeals for the Seventh Circuit.

--Additional reporting by Rick Archer. Editing by Alyssa Miller.

Update: This story has been updated with additional counsel information.