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Teamwork Triumph: Crafting Legal Success in Defeating Security Breach Class Certification Through Collaboration

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- Class Certification: key inflection point in class litigation
- Explicit Requirements of Rule 23
- Implicit "ascertainability" requirement in the Fourth Circuit:
 - **“Rule 23 . . . contains an implicit threshold requirement that the members of a proposed class be readily identifiable. A class cannot be certified unless a court can readily identify the class members in reference to objective criteria. So, if class members are impossible to identify without extensive and individualized fact-finding or ‘mini-trials,’ then a class action is inappropriate.”**

Career Counseling, Inc. v. Amerifactors Fin. Group, LLC, 91 F.4th 202, 206 (4th Cir. 2024) (cleaned up)

Background – Blackbaud, Inc.

- Blackbaud is the leading software provider exclusively dedicated to powering social impact, serving the nonprofit and education sectors, companies committed to social responsibility, and individual change makers
- As a SaaS (Software as a Service) provider, Blackbaud delivers solutions designed to accelerate impact in fundraising, nonprofit financial management, digital giving, grantmaking, corporate social responsibility and education management
- Blackbaud's solutions offer a high degree of customizability to meet the unique needs of various organizations

Background - Ransomware Attack and MDL

2020

May 14, 2020

Blackbaud discovers it is the victim of a ransomware attack.

May 20, 2020

Blackbaud completely expels the attacker from its systems after preventing the successful encryption of all its data.

July 16, 2020

Following its investigation, Blackbaud notifies potentially impacted customers of the ransomware attack.

August 12, 2020

First putative class action filed against Blackbaud arising out of the ransomware attack.

December 15, 2020

Multidistrict Litigation (MDL) created in South Carolina.

Background – Scope of MDL and Discovery

31 Cases Consolidated into MDL

53 Total Plaintiffs

400+ Pages in Operative Complaint

90 Causes of Action Alleged in Operative Complaint

13K+ Blackbaud Customers Potentially Impacted

~90K Potentially Impacted Customer Backup Files

2.6M Pages Produced by Blackbaud

65 Depositions

11 Experts

Background – Customer Backup Files

- Customers have the flexibility to determine what information they collect and how they store it to best meet the needs of their organization
- Information stored by customers in their databases hosted by Blackbaud is backed up regularly to ensure data is restorable if needed
- This process creates backup files – compressed copies of the databases
- These backup files were potentially impacted during the ransomware attack
- Analysis of backup files requires restoring them to their original state

- Potentially impacted data contained in nearly 90,000 customer backup files
- Analysis of customer backup files by experts required:
 - Assistance of Special Master
 - Creation of a secure virtual environment
 - Negotiation of a protocol
- Analysis of all customer backup files was not administratively feasible
 - Plaintiffs asked for potentially impacted backup files belonging to 100 customers identified by Plaintiffs

- Evaluate expert's final work product
- Analyze expert's workpapers, including algorithms developed
 - Replicate analyses
 - Identify data sources (i.e., which backup files were restored)
 - Identify and test underlying assumptions

- **From the Client's perspective**
 - Strong relationship with counsel fostered a deeper understanding of relevant issues, resulting in more effective and efficient collaboration
- **From Outside Counsel's perspective**
 - Trust in client and expert to provide education needed for strong defense
- **From the Expert's perspective**
 - Unique collaboration between client and the legal team to navigate complex data issues

- Plaintiffs failed to meet their burden of establishing ascertainability
- Plaintiffs' ascertainability expert fell far short of establishing a reliable and administratively feasible methodology for identifying putative class members and their potentially impacted data
 - Putative Class Members – unreliable Referential Index that could not be replicated
 - Potentially impacted data elements – use of highly individualized queries that were inadequately tested and could not be used on a classwide basis.

Plaintiffs' Expert's Analysis

- ⚠ Failed to define and produce a final work product
- ⚠ Failed to provide meaningful documentation or explanation of work done in virtual environment
- ⚠ Work product cannot be replicated using the same methodology and data
- ⚠ Failed to take steps to validate the accuracy of his analyses leading to inaccurate results and necessitating individualized inquiries
- ⚠ Unreasonable to assume proposed methodology could be applied on a class-wide basis; Limited analyses performed

Opposing Class Certification

- Almost a full day devoted to ascertainability arguments
- Nontraditional oral argument strategy
 - Court's appointment of a technical advisor
 - Incorporation of live demonstrations by expert

Court's Denial of Class Certification

- 62-page order denying class certification issued May 14, 2024
- Opinion focused on ascertainability; did not reach other arguments, but noted many of the ascertainability problems identified "cast doubt" on Plaintiffs' ability to satisfy Rule 23

What Has Happened Since

Sept. 27, 2024 – Motion for leave to file renewed class cert. motion

Dec. 30, 2024 – Order denying motion for leave

Feb. 18, 2025 – Motion for summary judgment on bellwether claims

April 14, 2025 – Scheduled hearing on motion for summary judgment

April 10, 2025 – Parties report settlement to Court

Questions?



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