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Data breach plaintiffs increasingly successful

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PHILADELPHIA—Cyber liability plaintiffs are experiencing more success in the courts, significantly increasing potential costs for companies that have experienced data breaches, an expert said Thursday.

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Speaking at the Second Annual NetDiligence Cyber Risk & Privacy Liability Forum, Meredith Schnur, vp of the professional risk group of Wells Fargo Insurance Services USA Inc. in New York, said, "A year ago the plaintiffs and the plaintiffs counsel were not winning." Today, that's changed significantly, said the moderator of a panel examining "The State of the Cyber Nation."

Increasing legislation and regulation related to data breaches at both the state and federal levels is contributing to plaintiffs' success, said panelist John Mullen Sr., chair of the complex litigation practice group at Nelson Levine de Luca & Horst L.L.C. in Blue Bell, Pa. "One of the reasons that the plaintiffs and the plaintiffs bar are starting to win is that the government is helping them," he said.

Cases moving to discovery

Jamie L. Sheller, principal at Sheller P.C. in Philadelphia, said plaintiff attorneys have gotten more adept at moving cyber liability cases beyond motions to dismiss to the discovery stage. "Once that happens, the coffers are open," Ms. Sheller said.

Another panelist, Richard J. Bortnick, West Conshohocken, Pa.-based chair of the professional liability practice area in the global insurance group of Cozen O'Connor P.C., said that once a cyber liability case has moved to discovery, the defense costs alone quadruple.

Ms. Sheller noted that the first mistake many companies make following a data breach "is to downplay the breach." Because of regulations in most states requiring companies to disclose exposure of consumer information, the information will become public, she noted, and the initial denials will cause greater reputational damage.

"Transparency is really important," said Mr. Bortnick. "Because if the entity that's attacked is not transparent, the Internet will be transparent for them."

NetDiligence, the marketing arm of Network Standard Corp., put on the forum in Philadelphia.

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