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## Premera Blue Cross Can't Escape Data Breach Suit

By **Rick Archer**

Law360, New York (February 10, 2017, 2:55 PM EST) -- An Oregon federal judge has found Premera Blue Cross can't escape revised consumer and employee allegations of fraud in multidistrict litigation stemming from a 2015 data breach affecting 11 million people.

While District Court Judge Michael H. Simon on Thursday trimmed back some of the breach of contract claims and found the company had not actively concealed its data problems, he found the plaintiffs had made a sufficient case they had been misled by Premera statements touting its privacy and data protection for this case to go forward.

"A reasonable person, reading those statements, would believe Premera provides reasonable and adequate data security," he said.

Premera announced in March 2015 that sensitive information, including Social Security numbers, financial information and medical claims, belonging to 11 million customers and workers had been stolen from the insurer's networks from May 2014 to February 2015.

As the consumers tell it, the U.S. Office of Personnel Management had specifically told Premera to fix vulnerabilities in April 2014, and that weeks later a phishing email persuaded an employee to install a "software update" that was actually malware and gave hackers access to the company database.

It wasn't until October 2014 that Premera first hired a company to look at its security, and it wasn't until Jan. 28, 2015, that that company, Mandiant, installed network sensors on Premera's networks. One day later, the breach was found, according to the mid-2015 complaint, among others.

In 2015, a group of consumers and employees filed a suit alleging violations of numerous state consumer protection and privacy laws, breach of express and implied contract, fraud, negligence, and unjust enrichment. In August, Judge Simon found the unjust enrichment claim good enough to withstand Premera's dismissal bid and OK'd a claim under California state law as well, but said the consumers **needed to more thoroughly back up** their accusations that Premera actively hid the laxity of its practices.

The consumers filed an amended complaint on Sept. 30. Premera **argued** the second round of claims were "vague and conclusory," saying they relied on nonspecific statements about privacy and data security in Premera publications and websites that were not intended as legally binding.

Neither have the customers explained what, exactly, Premera actively concealed from them, nor have they clearly articulated exactly what should have been disclosed to them in support of their fraud by omission claim, the company argued.

While he dismissed some of the fraud claims, particularly those over materials relating to the company's "Preferred Bronze" policy, Judge Simon found the plaintiffs had made sufficiently specific fraud allegations regarding statements in the company's privacy notice, code of conduct and other materials provided to consumers.

He did dismiss the active concealment claims, saying the plaintiffs had failed to identify any specific acts Premera did to hide its data security weaknesses from the public.

Judge Simon also found the claims of breach of contract for the statements in the company's privacy notice and "Preferred Select" policy were sufficient under Oregon law, but dismissed the claims by Washington residents and non-policyholders, as well as claims based on the language of the Code of Conduct and Preferred Bronze policy.

"We're pleased with the court's ruling and looking forward to moving forward with the case," Keith Dubanevich, one of the counsel for the plaintiffs, said in a phone interview Friday.

Counsel for Premera did not immediately respond to requests for comment Friday.

The plaintiffs in the MDL are represented by Kim Stephens, Christopher Brain, Chase Alvord and Jason Dennett of Tousley Brain Stephens PLLC, Keith Dubanevich and Steve Larson of Stoll Stoll Berne Lokting & Shlachter PC, Ari Scharg of Edelson PC, Tina Wolfson of Ahdoot & Wolfson PC, and James Pizzirusso of Hausfeld LLP.

Premera is represented by Daniel Warren and Paul Karlsgodt of BakerHostetler LLP and Darin Sands of Lane Powell PC.

The case is In Re Premera Blue Cross Customer Data Security Breach Litigation, case number 3:15-md-02633, in the U.S. District Court for the District of Oregon.

--Additional reporting by Cara Salvatore and Steven Trader. Editing by Emily Kokoll.