

## Justice Watch

Data breach lawsuits spur security plans

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By: John Pacenti

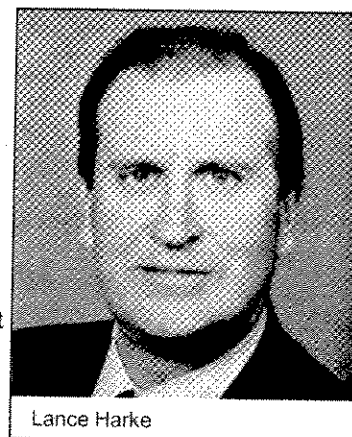
**D**ata breach lawsuits are on the rise as more businesses find themselves victimized by savvy computer hackers.

One of the latest breaches hit the Hannaford Bros. supermarket chain based in New England, which does business in Florida as Sweetbay Supermarkets with 101 locations. Hannaford is owned by the Belgium-based Delhaize Group.

The company said in March that thieves planted a "malware" program on servers at stores in New England, New York and Florida. The software intercepted payment card data including pin numbers and expiration dates at checkout counters, and the data was sent overseas.

Up to 4.2 million credit and debit card numbers were poached. The result has been about two dozen lawsuits against Delhaize in the last month — at least a half of dozen filed by South Florida attorneys.

Lance Harke of Harke & Clasby in Miami was one of the first, filing proposed federal class actions in Fort Myers and Maine as co-lead counsel.



Lance Harke

"The question is going to be what precautions were taken that the data was properly protected," Harke said.

The timing of Hannaford's discovery of the computer attack and public notification also are in play. Harke said information gathered for the case indicates Hannaford knew about the breach Feb. 27 and disclosed it March 17.

A three-count complaint filed on behalf of Jerzy Dobryniewski of Fort Myers claims at least 1,800 cases of fraud have been reported so far because of the security breach.

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The complaint seeking more than \$5 million in damages alleges unfair trade practices, negligence and breach of implied contract.

"This is an emerging area of the law, but this is not the first time the law has dealt with an emerging technology," Harke said. Businesses "are the ones who invite you into their environment. I think you can reasonably expect that when you make a purchase that you not have four new credit cards issued in your name."

Businesses, universities, hospitals and others safeguarding sensitive information find themselves under the gun by lawmakers to avoid breaches.

Under Florida law, a data breach can cost \$1,000 a day for the first 30 days if it goes undisclosed, said Robert C. L. Vaughan of Squire Sanders & Dempsey in Miami. The fine can increase to \$50,000 a month for the next six months and \$500,000 a day after that.

**Click play to listen to Lance Harke of Harke & Clasby in Miami on identity theft**



"They are not only pretty serious about maintaining the integrity of the data but also disclosing the breach," said Vaughan, a commercial litigator who has carved out a niche advising businesses about data protection and regulatory compliance.

Companies are open to litigation if they don't have the proper safeguards in place.

"With increased regulation, there has been much more attention paid to it (securing data) with the rise in credit fraud," Vaughan said.

The Squire Sanders Web site alerts companies to actions they can take to protect data:

- Develop a breach notification plan
- Establish data security procedures akin to an auditing system
- Encrypt data
- Consider procedures for data portability such as personal information stored on laptop computers.

Steffen Schmidt, a political science professor at Iowa State University specializing in identity theft, said Hannaford is one of his favorite cases because the company followed regulations but still got burned.

"It's simply a case where the company actually tried to do due diligence and found itself vulnerable," said Schmidt, who works with the university's Center for Information Protection. "Every week somebody comes up with a new trick or spoof."

An open letter on the Hannaford Web site from company president and CEO Ronald C. Hodge called the intrusion "a novel and sophisticated attack on our computer network."

Schmidt said litigation rather than the threat of fines could motivate businesses to protect data when fines are seen as a cost of doing business.

"There is an increased threat of these consumer class action lawsuits," he said. "If you got a couple of million confidential files and there's a breach and you are a real good trial lawyer, then you got two million potential customers. It becomes a big risk for companies."

Harke has already found success in a class action case involving Certegy Check Services in Tampa, which lost information on 8.4 million customers over a five-year period due to theft. An employee sold the data to third parties.

A tentative settlement calls for full compensation to anyone who suffered a financial loss and security monitoring of bank accounts for the class.

"It's a good settlement," Harke said.

At Hannaford, he expects all the lawsuits to be consolidated.

"There's a lot of hardship stories out there when data gets breached and banks shut down people's accounts," he said. "One client in the Hannaford case was on his way to a funeral and couldn't get to the funeral. For a lot of people it really puts them out."

Customers whose information has been pilfered are never sure they are out of the woods. Their information could be sold and resold until it reaches an identity thief.

"Six months from now someone could open up a credit line in your name," Harke said. "You wouldn't know until you got a notice in the mail saying you owe \$75,000."

Even though data breach class actions are on the rise, he said he hopes it's a temporary trend.

"We just want to make sure companies take the necessary steps," Harke said. "It's not enough to say you tried. People are out of money. There are lots of fears and lots of concerns. Simple techniques can be adopted."

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#### Correction

***The column incorrectly listed the penalty for a data breach in Florida. The maximum fine is \$500,000 if the breach is not made public after six months.***

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