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Judge Signals Approval For Sonic's Data Breach Settlement

By **Eric Heisig**

Law360 (October 6, 2022, 7:36 PM EDT) -- A Cleveland federal judge said Thursday that he plans to approve a \$5.7 million class-action settlement fast-food chain Sonic Corp. reached with financial institutions over a 2017 data breach that compromised millions of credit and debit cards.

U.S. District Judge James Gwin said during a virtual hearing that he thought the settlement's terms are fair and that he would issue an order saying as much.

"I ... observe, generally, that this was obviously very vigorously contested from both sides and that the settlement was a good faith effort to mediate the uncertainties associated with the litigation," said Judge Gwin, who gave his preliminary approval **in May**.

The Northern District of Ohio judge was less clear, however, on the request attorneys for the financial institutions made for \$2.2 million in fees and costs, which they said was for just over 10,000 hours of legal work and represented a 74% discount from the rate calculated by the lodestar method. While the Oklahoma-based chain agreed to pay that amount as part of the agreement, Judge Gwin said he would detail his views in an opinion.

The hearing was another step in resolving litigation that has stretched on for years over liability for the data breach that Sonic suffered.

The financial institutions argued that Sonic failed to adequately protect data at its restaurants, which allowed hackers to successfully install card-scraping malware at hundreds of Sonic Drive-In franchise locations and steal 5 million card numbers that were posted for sale on the dark web.

Sonic, in turn, said a software vendor was solely responsible for the breach and that the financial institutions failed to show that the fast-food chain either owed them a duty of care or caused the damages under Oklahoma law.

Magistrate Judge Jonathan D. Greenberg helped broker the settlement over three days of mediation earlier this year to avert a fast-upcoming trial and the risks associated with it.

Of the \$5.73 million Sonic agreed to pay, it will use \$3 million to reimburse the financial institutions \$1 for each payment card they reissued or \$1.50 for each eligible card involved in fraud. It will also pay up to \$500,000 for settlement administration — more if Sonic needs it for auditing — and as much as \$30,000 for class representative service awards, along with the attorney fees and costs.

Brian C. Gudmundson — who represents the class of financial institutions, including representatives American Airlines Federal Credit Union, Arkansas Federal Credit Union and Redstone Federal Credit Union — said during Thursday's hearing that no class members objected and only two opted out.

Sonic's lawyer Craig Cardon added that everything called for in the preliminary approval order was accomplished and expressed his appreciation for Judge Greenberg.

"And to quote, Judge Greenberg's favorite country song, 'How can I miss you if you won't go away?'" Cardon joked. "I'm hoping that we'll all be able to miss each other at some point very soon."

The dispute dates to 2019, when financial institutions started suing over Sonic's breach. Their

lawsuits were then consolidated into multidistrict litigation previously created for related cases filed by customers of the fast-food chain. Sonic reached a separate \$4.3 million deal in 2018 to resolve the consumer cases.

The financial institutions are represented by Brian C. Gudmundson and Michael J. Laird of Zimmerman Reed LLP, Charles H. Van Horn, Katherine M. Silverman and Lauren S. Frisch of Berman Fink Van Horn PC, Joseph P. Guglielmo, Erin Green Comite and Margaret Ferron of Scott + Scott Attorneys at Law LLP, Karen Sharp Halbert and William R. Olson of Roberts Law Firm PA and Arthur M. Murray, Stephen B. Murray Sr. and Caroline Thomas White of Murray Law Firm.

Sonic is represented by Craig Cardon, Kari M. Rollins, Liisa M. Thomas and David M. Poell of Sheppard Mullin Richter & Hampton LLP.

The case is In Re: Sonic Corp. Customer Data Security Breach Litigation, case number 1:17-md-02807, in the U.S. District Court for the Northern District of Ohio.

--Additional reporting by Joyce Hanson. Editing by Vaqas Asghar.

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