

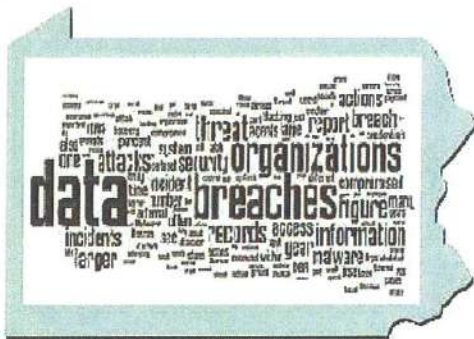


MATTIONI

COUNSELORS AT LAW

Newsletter

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Pennsylvania Court Limits Remedies for Data Security Breaches

By: Michael Mattioni, Esquire and Max Novelli

A Pennsylvania judge recently dismissed a class action lawsuit against the University of Pittsburgh Medical Center ("UPMC"), finding that the Commonwealth of Pennsylvania does not recognize civil claims against entities for failing to protect confidential data and personal employee information from security breaches.

The lawsuit, *Dittman v. UPMC*, was initially filed in the Court of Common Pleas of Allegheny County in February 2014 on behalf of employees of UPMC. Consisting of 62,000 current and former

employees, the class alleged that UPMC failed to protect their confidential personal information after identity-thief hackers caused a massive security breach. Stolen information included Social Security numbers, names, and addresses. The plaintiffs alleged that this information was used to file fraudulent tax returns and open bank accounts in their names.

Plaintiffs argued that UPMC was negligent in failing to create and properly monitor an effective security system and in failing to detect a system breach. The plaintiffs further claimed breach of contract, arguing that the "implied contract" between the employees and UPMC required UPMC to safeguard employee data.

On May 28, 2015, Judge R. Stanton Wettick Jr. dismissed the case, ruling based on Pennsylvania's "economic loss doctrine" that there was no cause of action against the facility for negligence where the damages were purely economic and caused no personal injury or property damage. Judge Wettick also cited public policy interests in his decision, noting that data breaches on companies have become increasingly widespread, and that allowing a cause of action for such a breach would potentially create hundreds of thousands of new lawsuits that could burden the courts.

Judge Wettick further expressed concern for businesses, noting that they are also victims in these situations, and that requiring them to expend additional resources could be highly damaging and could even put some companies out of business. Last, Judge Wettick stated that the responsibility of creating such an affirmative duty falls to the Pennsylvania State Legislature rather than the courts. The Pennsylvania General Assembly has previously considered the issue of data breaches and has required only that companies provide *notification* when a security breach has occurred.

Our Attorneys:

Presentations, Seminars and Honors



Michael Mattioni was re-elected Chancellor of the Justinian Society in June, 2015. He has been a long term member of its Board of Directors, and has served as Vice-Chancellor in past _____ years.

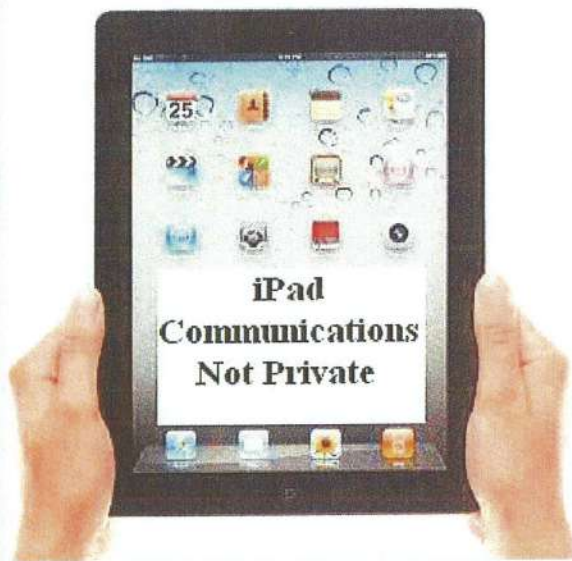
The Justinian Foundation, which provides scholarships to Italian-American students enrolled in Philadelphia-area law schools, recently presented scholarships totaling \$4,500 to three area students.

The Foundation held its annual scholarship reception on June 11 in Philadelphia. Michael Mattioni, Esq., the Chancellor of The Justinian Society, provided the evening's opening and closing remarks.

This article provides an overview of a recent decision by a Pennsylvania court that impacts persons who have their confidential information stored with their employers or other third parties. This is an evolving area of the law and different courts could reach different conclusions regarding these claims. Every situation is different and may lead to a different result. Anyone with questions regarding the decision should speak to an attorney or other appropriate professional.

Michael Mattioni, Esquire is President of the law firm Mattioni, Ltd., where he practices in the tax, business, real estate development, land use and zoning areas of the firm.

Max Novelli is a law clerk with Mattioni, Ltd., having recently finished his second year at Rutgers School of Law-Camden.



iPad® Communications Not Private, Not Protected Under PA Wiretap Act

*By: Michael Mattioni, Esquire and
Briannon Irwin*

A panel of Pennsylvania judges recently rejected a claim that text messages sent from an iPad® were protected under the



Joseph Bouvier, Chairman of the Greater Swedesboro Business Association Golf Tournament, hosted its 21st Annual outing on May 21, 2015. This year was one of the most successful outings that the GSBA has ever had.

The GSBA's mission is to promote and foster a feeling of fellowship among the members and promote local trade and commerce.

As Mattioni has an office in downtown historic Swedesboro, the funds raised through this event help with scholarships for local seniors, publish business directories, and host Memorial Day ceremonies and other celebrations and parades. The GSBA has also contributed to great causes including the library and charities chosen annually such as the Capt. Ryan K. Iannelli Memorial Scholarship Fund and Little Smiles.

Pennsylvania Wiretapping and Electronic Surveillance Act, finding that iPad® users do not have a reasonable expectation of privacy with regard to written communications sent from their devices.

The criminal case, *Commonwealth v. Diego*, 2015 Pa. Super. 143, was initially brought in the Dauphin County Court of Common Pleas in October 2014. Working with the Swatara Police Department, an informant used a texting service on his personal iPad® to plan a drug deal with defendant Curtis Doval Diego. The informant set up the transaction while at the police station and relayed Diego's responses to detectives in the room. Diego was later arrested at the agreed-upon location with several bundles of heroin. The trial court found that the messages were relayed to the police in violation of the Wiretap Act and granted a motion to suppress the information.

The Commonwealth argued that an iPad® was functionally equivalent to a telephone and is therefore excluded from the Wiretap Act. It further asserted that the Act was inapplicable because Diego had no reasonable expectation of privacy with regard to the messages he sent to the informant.

On June 23, 2015, the three-judge panel reversed the order to suppress the information, focusing primarily on Diego's expectation of privacy with regard to the messages sent to the informant. Although the Court held that iPad® are not telephones, it found that Diego could not have reasonably expected his messages to remain private and therefore, there was no violation of the Act.

Drawing from existing case law, Judge John T. Bender explained that when one sends a message, he should know that it is the recipient, not the sender, who controls the "destiny" of that message. Anyone with the ability to use the Internet should be aware that messages are sent in a recorded format that enables



Joshua Kobylarz represented Crime & Punishment Brewing Company, LLC in front of the Philadelphia Zoning Board of Adjustment in late June. Crime and Punishment was denied zoning approval to operate its brewpub which would serve food and beer brewed on premises. The Department of Licenses and Inspections refused Crime and Punishment's zoning application stating brewing beer was not permitted in the zoning district where Crime and Punishment intended to open.

Because Crime and Punishment's application was refused, it was forced to seek a variance from the Philadelphia Zoning Board. Mr. Kobylarz presented three different arguments as to why Crime and Punishment should be granted a variance and permitted to brew beer at its intended location. The Zoning Board unanimously approved Crime and Punishment's variance and the brewpub opened July 11, 2015.

them to be downloaded or printed. Because the communication is automatically recorded by the recipient's device, there is always the risk that the recipient will share the information with others. Likening texts to e-mails and chat-room comments, Judge Bender concluded that Diego expressly accepted that risk by choosing to communicate via the Internet.

This article provides an overview of a recent decision by a Pennsylvania court that impacts persons who utilize various means of technology to communicate. This is an evolving area of the law and different courts could reach different conclusions regarding these type of communication. Every situation is different and may lead to a different result. Anyone with questions regarding the decision should speak to an attorney or other appropriate professional.

Briannon Irwin is a law clerk with Mattioni, Ltd., having recently finished her second year at the Temple University James E. Beasley School of Law.



Philadelphia's New Sick Leave Act

By Michael Mattioni, Esq.

The City of Philadelphia recently joined New York City as requiring employers with ten (10) or more employees to provide paid sick time for most employees. The ordinance also requires

Mattioni attorneys have successfully represented clients in various zoning matters before the Philadelphia Zoning Board. If you need assistance with a zoning related matter, the attorneys at Mattioni are prepared to aid you in resolving your issue

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employers with fewer than ten (10) employees to provide unpaid sick time to employees.

The Ordinance had a lengthy preamble discussing the reasons for its adoption. The preamble stated that it is estimated that 200,000 workers in Philadelphia lack access to paid sick time. The preamble noted the hardship that this posed when workers or their family members were ill and how the Ordinance's goal is to improve overall health for employees and their families by providing for paid time off from work for ill employees and their families. The Ordinance also permits employees to use their sick time if they are victims of domestic violence to receive treatment and to take steps necessary to ensure their protection from continuing domestic violence, including time to appear in court proceedings.

The Ordinance requires employers provide at least forty (40) hours of paid sick time per year to full-time employees. The paid sick time shall accrue with a minimum of one hour of sick time for every forty hours worked, so part-time employees are also covered, based upon the hours worked.

Employers are required to inform employees of the paid sick time requirements either by giving written notice to each employee or by posting a poster in a conspicuous and accessible place in each establishment where employees are employed. The poster must state that employees are entitled to sick time, the amount of the sick time and that the right to use sick time is guaranteed by the Ordinance.

There are many other provisions of the Ordinance, including how it is to be enforced, penalties for employers who fail to comply and remedies for employees who are denied the sick time off as set forth in the Ordinance.

This article highlights some of the many requirements of the new

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paid sick time Ordinance which became effective in Philadelphia on May 13, 2015. The ordinance is lengthy and has many provisions that employers and employees should be aware of. This article does not discuss all of the provisions of the Ordinance, but provides highlights regarding some of its provisions. Anyone with questions regarding the Ordinance should contact the appropriate professional as each situation is different.



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