

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE: TARGET CORPORATION
CUSTOMER DATA SECURITY
BREACH LITIGATION

Case No. : 0:14-md-2522-PAM

TRANSCRIPT
OF
PROCEEDINGS
(MOTIONS HEARING)

The above-entitled matter came on for MOTIONS HEARING before Senior Judge Paul A. Magnuson on July 24th, 2014, at the United States District Courthouse, Courtroom 7D, 316 N. Robert Street, St. Paul, Minnesota 55101, commencing at approximately 10:30 a.m.

Reported by: RONALD J. MOEN, OFFICIAL COURT REPORTER, CSR,
RMR.

CALIFORNIA CSR NO. : 8674

ILLINOIS CSR NO. : 084-004202

IOWA CSR NO. : 495

RMR NO. : 065111

APPEARANCES

CHESTNUT, CAMBRONNE, PA, 17 Washington Avenue North, Suite 300, Minneapolis, Minnesota 55401-2048, by KARL L. CAMBRONNE, Attorney at Law, appeared as counsel on behalf of the Banking Institution Plaintiffs.

ZIMMERMAN, REED, PLLP, 1100 IDS Center, 80 South Eighth Street, Minneapolis, Minnesota, by CHARLES S. ZIMMERMAN, Attorney at Law, appeared as counsel on behalf of Financial Institutions/Banking Plaintiffs.

THE COFFMAN LAW FIRM, P.C., 505 Orleans Street, Suite 505, Beaumont, Texas 77701, by RICHARD L. COFFMAN, Attorney at Law, appeared as counsel on behalf of Employees Credit Union, KC Police Credit Union, and American Bank of Commerce.

FAEGRE, BAKER, DANIELS, LLP, 90 South Seventh Street, Suite 2200, Minneapolis, Minnesota 55402-3901, by WENDY J. WILDUNG, Attorney at Law, appeared as counsel on behalf of Defendants Target and the Target affiliates in the Consumer Class Actions and the Bank Class Actions, and appeared as counsel on behalf of Defendants Target and the individual defendants in the Shareholder Derivative Actions.

1 THE COURT: We have the matter of the Target Data
2 Breach, with a motion to amend a point on the bank cases.

3 I guess I'll leave it to you as to who's going to
4 lead off on discussion.

5 MR. COFFMAN: May it please the Court. Good
6 morning, your Honor.

7 THE COURT: Good morning.

8 MR. COFFMAN: Richard Coffman for Employees Credit
9 Union, KC Police Credit Union, and American Bank of Commerce.
10 I guess since it's my motion, I'll lead us off.

11 THE COURT: Okay. Well, I thought you would, but I
12 wasn't sure.

13 MR. COFFMAN: I appreciate that. First of all,
14 your Honor, I want to thank the Court for considering this
15 motion on an expedited basis. I also want to commend to the
16 Court case leadership on both sides of the docket for
17 facilitating this hearing today on a quick turn.

18 Your Honor, the motion that's before you I believe
19 is pretty straightforward. There are a few misconceptions
20 and misperceptions that I noted reading the oppositions to
21 the motion that I wanted to address right off the bat. First
22 of all, your Honor, about filing this motion, we are not for
23 the first time withdrawing our class claims. We withdrew our
24 class allegations when I stood before the Court on May 14th,
25 when I was asking for the creation of a formal fourth track.

1 So that's not a new development by this motion. By this
2 motion, we're also not seeking to inject ourselves into case
3 leadership. The Court has chosen case leadership; the Court
4 has chosen very fine lawyers. We respect that decision. If
5 we're allowed to file this particular motion and -- I'm sorry
6 -- Complaint, and if a benefit from our data breach
7 experience, especially on behalf of financial institutions,
8 that would certainly would be a bonus, no doubt. But we're
9 not seeking to inject ourselves into this case as case
10 leadership.

11 We're also not seeking the Court's reconsideration
12 of our request for the creation of a formal fourth track.
13 We're not seeking the creation of a subclass or a spinoff
14 class action. And I want to be very precise about this. All
15 we're seeking to do, your Honor, is file a Complaint for our
16 clients who don't want to be part of the class action; who
17 want to file their claims individually; who want to require
18 Target to deal with them on an individual basis; and most
19 important, to be able to file these RICO claims -- which we
20 believe are cutting-edge claims -- which we believe will
21 benefit all plaintiffs in the long run. And, in fact, class
22 counsel has now confirmed to me that they do not intend to
23 assert the RICO claims in their consolidated amended
24 class-action Complaint.

25 THE COURT: Well, this is one of the things that I

1 was kind of concerned about today is whether or not we're
2 here at the right time, and that concern -- and I'm sure you
3 plan to address these, but I just -- they're in my mind. And
4 that is, number one, you know, you're a pretty good
5 persuasive lawyer and, hopefully, your fellow counsel have
6 some listening ears and maybe they'll decide that you
7 persuaded them to include a RICO claim in their proposed
8 consolidated Complaint. Now, I wouldn't bet the store on it
9 and neither will you. But, nevertheless, you know, that's a
10 possibility. And, so, I'm wondering if we're at the right
11 time for that. More importantly, though, is that there will
12 be a consolidated Complaint, to which this court is thankful.
13 I'll let that be known. But there will be a consolidated
14 Complaint. And with the filing of that consolidated
15 Complaint, I fully anticipate that all the benevolent
16 withdrawal of class claims are going to go right out the
17 window and there's going to be a class action right across
18 the front page of that consolidated Complaint. And
19 there's going to be someday that counsel are sitting at a
20 table with you and are going to be standing before me and
21 saying, "Judge, you've got to put that in place," and
22 Ms. Wildung is going to stand up and say, "No." And we're
23 going to have that discussion. Now, if I deny that,
24 obviously individual claims are then coming forward and
25 individual claims are going to be subject to some amendments

1 to fit to the individual people. If a class is granted,
2 whatever that may be or whatever that would look like -- you
3 know, we can speculate. We don't know. But whatever that
4 class would look like, I've got a pretty strong feeling,
5 Mr. Coffman, you're going to send me a little note and say,
6 "They can go right ahead with their class action, but I'm
7 going to sit here in Texas and I'm going to say, 'No, I'm
8 going on my own way.'" And what am I going to do? I'm going
9 to say, "Have a nice trip," you know, because that's kind of
10 the way these things work. And that's what I'm concerned
11 about is whether or not we're, in fact, not out in front of
12 the horse with it, that we should keep the horse and buggy
13 going in their own way. But at such time as you come to the
14 fork in the road, like Yogi Berra says, "You take it," and
15 that will lead to probably some pretty significant decision,
16 because that will lead to a fundamental decision that I think
17 is -- which is the decision you're really looking for and
18 that is is this a RICO claim or is it not. Now, I expect
19 there's going to be the day that I'm going to have to make
20 that decision, but I'm seriously questioning whether or not
21 it's now.

22 Okay. I've given my thought on it. Now I want to
23 hear why I'm wrong.

24 MR. COFFMAN: Let me address a couple of your
25 points. And I think I can cut to the chase on this. First

1 of all, just so the Court knows, I have had several
2 conversations with class counsel --

3 THE COURT: I'm sure you have.

4 MR. COFFMAN: -- about adding the RICO claims. And
5 at least as of the last call that I had with them that answer
6 was a "No." I think, your Honor, what you're talking about
7 here is efficiency. I think you're talking about whether
8 it's better to coordinate briefing and discovery now. Maybe
9 it will take a few extra phone calls here and there and
10 e-mails to do so. But maybe I'm missing something from an
11 efficiency standpoint. But it would seem like to me that it
12 would be better to organize this case in this fashion, up
13 front. And I've given the Court several examples of where
14 this type of case organization in MDLs is going on right now.
15 Many of the lawyers in this case are in some of those cases.

16 THE COURT: Oh, counsel, I haven't challenged that
17 at all. We know that that's going on.

18 MR. COFFMAN: Right.

19 THE COURT: Frankly, it's going on in this case.
20 It's going on in a little different way than you wanted it
21 to, but, you know, this thing is already split up in a bunch
22 of stuff.

23 MR. COFFMAN: I understand. But there are examples
24 in that list, your Honor, where there are multiple tracks for
25 class-action claims and then a track for individual claims.

1 But I think what it really boils down to is efficiency. And
2 what I was going to say is this. It would seem like to me
3 that it's more efficient to coordinate all this up front and
4 do it once rather than for my clients to bide their time to
5 the end of the case, opt out, file a Complaint, and do it all
6 over again. So I have a solution, your Honor. And I'll make
7 this offer to the Court.

8 THE COURT: Okay. But before you give me your
9 solution, let me ask you a question.

10 MR. COFFMAN: All right.

11 THE COURT: Isn't it also beneficial to your client
12 to let these various series of things go on that are going to
13 go on in the discovery process, et cetera, before a class
14 matter is heard, for the simple reason that you aren't going
15 to get a civil RICO claim through this court based on a
16 one-page Complaint.

17 MR. COFFMAN: Nor is my Complaint one page.

18 THE COURT: Well, that's right. But what I'm
19 simply saying is that you may have concepts today that you
20 want to advance, but you can bring -- once some more
21 information is known, you can particularize your Complaint to
22 the information that you know to fill in the series of blanks
23 that are so often a problem on RICO cases, a series of
24 factual blanks.

25 MR. COFFMAN: That's assuming, your Honor -- and I

1 hear what the Court's saying. That's assuming, your Honor,
2 that the discovery is taken, if it gets that far --

3 THE COURT: It is.

4 MR. COFFMAN: -- that pertains to RICO claims. And
5 I'm not sure that any discovery or much discovery would be
6 taken pertaining to RICO claims. It's not even pled.

7 THE COURT: Yes, there's an aspect of truth in what
8 you're saying. Because if there's no allegation of RICO,
9 then judges get mad when people start asking RICO questions.
10 So you're right about that. But there's an overall factual
11 thing --

12 MR. COFFMAN: There is.

13 THE COURT: -- that everybody is going to have an
14 interest in.

15 MR. COFFMAN: I've got to tell you, Judge, I'm very
16 confident in our RICO Complaint. I'm blessed to have on our
17 team Professor Robert Blakey who is considered to be the
18 architect of the --

19 THE COURT: I think I started debating with him in
20 1982.

21 MR. COFFMAN: So this will give you an
22 opportunity --

23 THE COURT: And I certainly don't challenge his
24 intellect, believe me.

25 MR. COFFMAN: This will give you an opportunity to

1 rekindle that debate, then. Here's my proposed solution --
2 here's my offer to the Court, just to show you, Judge, and
3 all the lawyers in the room what our good-faith intent is
4 here. If the Court will allow us to file this individual
5 Complaint on behalf of our individual clients, whatever
6 claims that we assert, that class counsel assert in their
7 amended consolidated class-action Complaint, we'll roll with
8 class counsel, meaning Target would not be required to brief
9 out those overlapping claims for our Complaint, as well as
10 class counsel's Complaint. Because, quite frankly, we can
11 rely on class counsel to argue those. Because if they can't
12 win them, I can't win them. I've lived that dream. And if
13 they can't win them, I can't win them. The flip side being
14 for those claims that are not overlapping -- which presumably
15 would be the RICO claims -- we'll handle it. And that way
16 Target would only have to file one brief one time addressing
17 all claims in the litigation. There would be no overlap,
18 there wouldn't be no inefficiency, and we can get on down the
19 road. That's my proposal, your Honor. And based on that
20 proposal and our discussions here today, I would just request
21 that you grant this motion and allow the individual
22 plaintiffs to file their Complaint.

23 THE COURT: Okay. Very well. Thank you very much.

24 Who wants to stand up? Okay. Those two can talk
25 about each other. Bucky, you come on up. Mr. Zimmerman.

1 MR. ZIMMERMAN: Your Honor, it's a pretty clean and
2 clear simple issue. Rule 23 tells Mr. Coffman's clients when
3 they can opt out. It's just not right now. And the Court
4 talked about that. The MDL rules and court structure
5 provides for a reasonable discovery process. We will do
6 that. And it's underway. If the RICO claim is appropriate,
7 as the Court said, we will find the operative facts and we
8 will bring that claim if, in our judgment, it's appropriate.
9 We will be happy to consult with Mr. Coffman or Mr. Blakey or
10 all or both with regard to what we see and what facts are
11 found and bring it forward if it lies. I think that's what
12 this court has asked us to do by appointing us to leadership.
13 So Mr. Coffman and his clients' rights will be preserved and
14 the MDL will be properly managed. I think that's the process
15 we can handle in this case by going through the Rule 23
16 requirements and going through the structure to do the
17 discovery. It just seems that simple to me. So that's what
18 I would leave as my thoughts from the leadership side and the
19 plaintiffs. And we're happy to work with Professor Blakey,
20 and I'm sure he can enlighten me. And we've had conference
21 calls already and we will continue to.

22 THE COURT: Okay. Sounds good. Thank you very
23 much.

24 MR. CAMBRONNE: Karl Cambronne, your Honor. One
25 other thing I might add is this court has not scheduled this

1 case to unfold over many, many years. It's a relatively
2 quick schedule, consistent with the practice here in
3 Minnesota. And, therefore, the timing issue that you allude
4 to can be accommodated by the normal process; for instance,
5 you're going to be presented with a class motion, I think,
6 right after the first of the year. That is going to be up or
7 down based on your decision. There will be either an opt-out
8 right or individual cases at that time. We're not talking
9 about a huge delay here. So that I think counsel is in favor
10 of denying the motion.

11 THE COURT: Okay. Very well.

12 Ms. Wildung.

13 MS. WILDUNG: Your Honor, Target asks the Court to
14 deny the motion. While I appreciate Mr. Coffman's arguments,
15 the fact of the matter is his client is identically situated
16 to everyone else who brought a purported class action that
17 ended up in this MDL. And the arguments he may make could be
18 made by any other perspective class member who might say, "I
19 want to bring a claim under the Missouri Merchandising Act"
20 or something that creative lawyers can think of that I'm not
21 unaware of. The whole purpose of the MDL was to streamline
22 and coordinate these cases, and allowing any individual case
23 to be filed here before a class claim has been considered
24 under Rule 23 has really the opposite effect of what I think
25 the MDL rules intended. We agree with the Court that it's

1 premature to be talking about individuals opting out and
2 bringing claims at this point. And I would also observe that
3 we don't see any prejudice to Mr. Coffman's clients by
4 waiting until an appropriate time comes in this case for that
5 decision to be made. There could be any number of things
6 that moot the case. The Court could conclude, as the Court
7 said, that a class should not be certified in which
8 individual cases will go ahead. The Court could conclude
9 that a class should be certified, in which case Mr. Coffman's
10 clients may have an opportunity to opt out. And at that
11 time, they'll be, I think, better situated to make a more
12 informed decision because of what will have happened in this
13 case up to that point in time. It may be the very same
14 decision that they are making today. But there's no
15 prejudice to them from waiting, and I think they'll have more
16 and better information to make that decision. So we think it
17 should be denied.

18 THE COURT: Okay. Thank you.

19 Mr. Coffman, anything else? Mr. Coffman, anything
20 further?

21 MR. COFFMAN: Judge, it all just boils down to your
22 discretion. There have been a lot of rules cited here.
23 There's plenty of flexibility in those rules. Cases are
24 organized like this all day every day in MDLs across the
25 country. And I just leave our motion with you.

1 Thank you, Judge.

2 THE COURT: Okay. Thank you very much. Thank you
3 for the submissions. Thank you for coming up today.
4 Counsel, I'm going to give the briefs another perusal and
5 we'll get a note off to you shortly.

6 MR. CAMBRONNE: Your Honor, could I raise one
7 related but different issue?

8 THE COURT: You sure can.

9 MR. CAMBRONNE: You have sub judice right now, the
10 motion to stay discovery brought by Target, and that was
11 intentionally not --

12 THE COURT: No, I don't.

13 MR. CAMBRONNE: What's that?

14 THE COURT: I said, "No, I don't." Because after
15 you left the office this morning and after Ms. Wildung left
16 the office this morning, I signed the Order. You won and she
17 lost. So you're not going to stand.

18 MR. CAMBRONNE: Very well. I'm going to sit down.

19 THE COURT: We're going to go ahead. Okay.
20 Counsel, we thank you for coming in today, and we'll look
21 forward to seeing you, I don't know, sometime next month.

22 (Court stood in recess at approximately 10:50 a.m.,
23 on July 24th, 2014).

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CERTIFICATE PAGE

I, Ronald J. Moen, an Official Court Reporter for the District of Minnesota, CSR, RMR, and a Notary Public in and for the County of Hennepin, in the State of Minnesota, do hereby certify:

That the said MOTIONS HEARING was taken before me as an Official Court Reporter for the District of Minnesota, CSR, RMR, and a Notary Public at the said time and place and was taken down in shorthand writing by me;

That said MOTIONS HEARING was thereafter under my direction transcribed into computer-assisted transcription, and that the foregoing transcript constitutes a full, true and correct report of the MOTIONS HEARING which then and there took place;

That I am a disinterested third person to the said action;

That the cost of the original has been charged to the Plaintiffs and Defendants equally.

That I reported pages 1 through 15.

IN WITNESS THEREOF, I have hereto subscribed my hand this 25th day of July, 2014.

s/Ronald J. Moen
Ronald J. Moen,
Official Court Reporter,
CSR, RMR, NP