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Eleventh Circuit Decisions May Chill Future Data Breach Class Actions

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The holidays came early for class action defendants in the Eleventh Circuit. Within just over a month, that court issued two decisions with potentially large consequences for data breach litigation in the Eleventh Circuit: *Johnson v. NPAS Solutions, LLC* and *Muransky v. Godiva Chocolatier, Inc.*

With *Johnson*, the Eleventh Circuit effectively forbade service awards to named plaintiffs in class action lawsuits, finding such payments contrary to two separate Supreme Court decisions. These service awards, typically between $1,000 and $7,500 per named plaintiff, were an incentive for named plaintiffs to bring suit on behalf of a class, and without them, plaintiffs' firms may have more trouble finding willing class representatives.

In *Muransky*, the Eleventh Circuit weighed heavily in opposition to finding standing in class actions based solely on the occurrence of a data breach. Although the decision was made in a Fair and Accurate Credit Transactions Act case, its language and reasoning extends deeply into the concept of Article III standing in data breach class actions. As explained in *Muransky*, allegations of a mere "elevated risk of identity theft" is insufficient for standing purposes. Plaintiffs hoping to survive motions to dismiss must show actual identity theft or other concrete harm, and cannot simply rely on the occurrence of a breach and prophylactic measures to establish their ability to sue in federal court.

Together, the decisions serve as a onetwo punch to data breach plaintiffs in the Eleventh Circuit. These decisions, a likely reflection of an increasingly skeptical court when it comes to data breach cases, could be only the beginning. We will continue to monitor this activity and evaluate what it means for future data breach class actions.

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