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First SIM-Swap Conviction: What's the Message for Mobile Providers?

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On February 3, 2019, 20-year-old Joel Ortiz pleaded guilty to stealing more than $5 million in cryptocurrencies like bitcoin and ether from multiple victims after fraudulently accessing their cell phone accounts and "swapping" out their SIM cards to devices that he controlled. Ortiz is the first person convicted for perpetrating this increasingly popular fraud and will spend up to 10 years in prison.

SIM swapping is a low-tech way for fraudsters to gain access to a victim's mobile accounts or digital wallets that has been deployed against customers of every major mobile phone provider. Scammers use information obtained through third-party data breaches, phishing emails, social media investigations, or personal knowledge to pose as an account holder and convince the mobile phone carrier to replace the account holder's lost or damaged SIM card. After convincing the customer service rep to link their victim's cell phone number to a SIM card they control, fraudsters use the linked device to authenticate their identity in order to access the victim's personal financial accounts, including cryptocurrency wallets and exchanges.

Because the perpetrators of these scams are often unidentifiable or beyond the reach of the courts, victims increasingly seek relief from other entities that may arguably have a connection to the illicit transaction, including their financial institutions and mobile service providers, for allegedly allowing the fraudulent swap to occur. In the last two years, the number of lawsuits asserting that the actions, policies, and procedures of wireless providers played a role in such schemes has increased substantially. In one notable case, *Terpin v. AT&T*, a mobile phone provider was sued for $240 million in damages arising out of a SIM-swap scam that led to the theft of the plaintiff's virtual currency. AT&T has moved to dismiss the case, but it currently remains pending in a California federal court. Industry commentators anticipate that claims of this sort will be brought against telecom providers with increased frequency.

Many mobile phone providers are aware of SIM-swapping schemes, and have alerted customers, and developed internal education programs and compliance policies that deal specifically with how to protect customers who use mobile devices to manage or store virtual assets. As the law continues to develop in this area, providers should also consider adopting specific contractual limitations that address, mitigate, and potentially exclude provider liability resulting in the theft of unrecoverable virtual assets. This includes, potentially, also requiring mobile cryptocurrency holders to adopt best practices such as limiting changes to mobile accounts.

Carlton Fields has assisted telecommunications companies in developing policies and best practices that address the increasing risk associated with storing digital assets on mobile devices and using mobile accounts as a secondary authentication factor for validating financial transactions. You can read more about the mechanics and potential implications of SIM swapping in an article written by Justin Wales, the co-chair of Carlton Fields' Blockchain and Digital Currency practice group, titled "When High-Tech Cryptocurrencies Meet Low-Tech Scammers."

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