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Optometry Board Reaches \$3M Deal In Data Breach Suit

By **Dani Kass**

Law360 (March 7, 2019, 7:01 PM EST) -- The National Board of Examiners in Optometry Inc. has agreed to bulk up its data security and set aside \$3.25 million in cash to compensate more than 60,000 victims of an alleged breach at the testing organization.

In an order made public Thursday, Chief U.S. District Judge James K. Bredar of Maryland gave his preliminary OK to the settlement, which provides a combination of financial benefits and credit monitoring services for the proposed class. The organization has also agreed to take steps to make sure a breach doesn't happen in the future.

The settlement stems from three suits in which eye doctors said their social security numbers, dates of birth and other personal information were taken from the board and used to apply for credit cards in their names. They were required to provide that information to take their certification examinations.

Under the proposed deal, the optometry board would give class members up to \$1,000 each for lost time spent fixing issues tied to the alleged breach and up to \$7,500 to handle out-of-pocket losses that could be traced to it. The organization would then provide three years of credit monitoring for class members who sign up for it, worth \$720 per person. That monitoring comes with up to \$1 million in reimbursement insurance if there is any identity theft or fraud.

The board then agreed to provide access to identity restoration services, pay the costs of notifying the proposed class and administering the settlement, pay attorney fees as approved by the court and pay any service awards ordered for class representatives.

Lastly, the organization agreed to get an independent firm to assess its security and to start encrypting personal information and stop storing full social security numbers in its online database.

Judge Bredar had initially dismissed the case in 2017, citing standing issues. But the **Fourth Circuit revived it** in June, finding that having information stolen to open credit cards constitutes an injury.

The parties entered into mediation before JAMS' Cathy Yanni and reached an agreement on Jan. 16, which was memorialized about a month later, according to court filings.

The parties agreed that the proposed class involves some 61,000 people.

Judge Bredar on Thursday appointed Norman E. Siegel and J. Austin Moore of Stueve

Siegel Hanson LLP interim class counsel. He also set a final approval hearing for July 12 and ordered that notice of the settlement be sent to the proposed class members.

"We are pleased we were able to secure this settlement on behalf of thousands of eye doctors across the country," Siegel said in a statement. "This was a hard-fought case, and this result was achieved only after convincing the Fourth Circuit to reverse the district court's order dismissing the case on Article III standing grounds."

Counsel for the optometry board didn't immediately respond to a request for comment Thursday.

The proposed class is represented by Norman E. Siegel, Barrett J. Vahle and J. Austin Moore of Stueve Siegel Hanson LLP, Michael Liskow of The Sultz Law Group PC and Hassan Zavareei of Tycko & Zavareei LLP.

National Board of Examiners in Optometry is represented by Claudia D. McCarron of Mullen Coughlin LLC.

The case is Hutton et al. v. National Board of Examiners in Optometry Inc., case number 1:16-cv-03025, in the U.S. District Court for the District of Maryland.

--Editing by Haylee Pearl.