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Newsroom

Dean Logan on BlackBerry Legal Exposure

Reuters spoke to Dean David Logan on the potential legal exposure faced by BlackBerry as a result of widespread service outages.

FROM REUTERS: "RIM could face lawsuits for BlackBerry problems: Some law firms are considering breach-of-contract or consumer-fraud claims over the recent BlackBerry outage" by Moira Herbst and Alastair Sharp

Outlets picking up the story include MS-NBC, NPR, the Baltimore Sun, and others.



October 19, 2011: Law firms in the United States

and Canada are exploring possible consumer lawsuits against Research In Motion for last week's BlackBerry outages, which for three days crippled email and messaging for tens of millions of users around the world.

Consumer lawyers say they are looking at whether customers have common claims against the BlackBerry manufacturer and might be able to band together in a single lawsuit.

While the outage did not rise to the level of seriousness comparable to a dangerous medication or tainted food, it inconvenienced and angered customers. Frustrated BlackBerry users, turning to blogs, message boards, Twitter and Facebook, complained about losing important emails and missing meetings last week.

“
Law firms are considering breach-of-contract or consumer-fraud claims,
attorneys said.”

A breach-of-contract claim could argue the company failed in its obligations to provide service and could include carriers for BlackBerry service as additional defendants, said attorneys exploring litigation against RIM.

A consumer-fraud claim could focus on whether customers were misled about the reliability of RIM's networks.

But consumers could face hurdles to winning big damages. It will likely be difficult to prove damages beyond loss of service and varying state laws make the chances of bringing a nationwide consumer-fraud class action remote.

Still, some customers may push forward.

"Here, you just have the loss of (BlackBerry) use, so tons of class-action firms are not running to the courthouse steps," said Jay Edelson, a partner with the law firm Edelson McGuire in Chicago, who represents plaintiffs. "But there are definitely consumers motivated to lend their names to the case to make sure these problems don't happen again in the future."

Because consumers can hire lawyers on a contingency basis, they would not have to fund the litigation, an added incentive, he said. Winning a class action case for BlackBerry users, in turn, would raise the profile of a small or medium-sized law firm.

A U.S. Supreme Court consumer class-action ruling in April, in a case known as *Concepcion vs AT&T*, could also limit any BlackBerry outage lawsuits. The decision made it more difficult for consumers to sue if a contract they signed with a company demands that disputes be settled through arbitration on an individual basis.

"One of the major battles in any lawsuit against RIM will be whether the claims against RIM are subject to the arbitration clauses," said Jonathan Tycko, a partner with Tycko & Zavareei in Washington who brings consumer class actions. "If they are, then that could make it quite difficult to bring a class action."

Still, lawyers are investigating whether plaintiffs could band together and what claims they could file.

"We may end up pursuing consumer-protection statute class-action cases in one or more states," said Mark Baumkel, a partner with law firm Baumkel & Associates in Bingham Farms, Michigan. " given the very short time of the disruptions in service, the damages for consumers in each state may not add up to huge amounts of money."

RIM did not respond to messages seeking comment on potential lawsuits.

Law firms in Canada, where RIM is headquartered, are also considering lawsuits, said Paul Battaglia, managing director of Toronto-based Trilogy Class Actions, a consulting firm that connects consumers with class-action attorneys.

Battaglia said his firm is in discussions with other law firms about potential lead plaintiffs.

Last week's problems began with a failure in RIM's European data center and spread across the world before it began to recover on Thursday.

BlackBerry devices have experienced similar, but more short-lived outages each year since 2007. The system failures came as RIM struggles to hold on to market share for BlackBerry smart phones, as more customers opt for Apple Inc's iPhone and Google Inc's Android.

So far, RIM has not offered to compensate customers for the outages. The company said on Monday it would offer subscribers access to premium apps "as an expression of appreciation for their patience during the recent service disruptions." The apps will be available for four weeks and are worth more than \$100 per customer, RIM said.

The offer did not satisfy investors. RIM's stock sank 6 percent on Monday following the news.

If RIM were to pay back all affected customers and service carriers for the days of service lost, the cost to the company could be between \$15 million and \$26 million, BMO Capital Markets analyst Tim Long said in a research note.

If consumers go to court, legal experts say it would be tough to win damages beyond compensation for loss of service.



"It would be very hard to prove actual damages from a failure of access to a smart phone," said **David Logan, dean of Roger Williams University School of Law and an expert in mass tort litigation.** "After all, for almost everybody there are alternative ways to communicate in a pinch."

Edelson said consumer lawsuits are more likely to succeed in changing RIM's practices than recovering large economic damages. He said his firm received dozens of calls from BlackBerry users and he will decide whether to bring a lawsuit by the end of the week.

"Based on the investigation we've done, it looks like this is something RIM could have prevented," said Edelson. "They have not come clean about why the outage occurred or what new steps they have in place to prevent similar interruptions in the future."

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