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BREAKING: Sony, Zurich Settle Data Breach Coverage Battle

By **Jeff Sistrunk**

Law360, Los Angeles (April 30, 2015, 12:11 PM ET) -- Sony Corp. of America has settled its fight with Zurich American Insurance Co. and other insurers over coverage for the infamous PlayStation Network data breach, two months after a New York appeals panel heard the entertainment giant's challenge to a landmark ruling in the insurers' favor, according to court documents filed Thursday.



The breach of Sony's PlayStation Network, which allows users to play video games with other PSN users around the world, was one of the largest recorded data security breaches at the time. Here, some gamers in 2006 try out the then-new PlayStation 3. (Credit: AP)

Sony, Zurich and Mitsui Sumitomo Insurance Co. have executed a written settlement agreement, stipulating to the withdrawal of Sony's appeal and the dismissal of the case with prejudice, court papers show. Terms of the settlement were not disclosed in court filings, and representatives for the parties did not immediately respond to requests for comment on the deal.

Attorneys for Sony in late February urged an appellate panel to reverse a lower court's finding freeing Zurich and Mitsui Sumitomo

from covering the massive 2011 data breach. The trial court ruled that hackers' theft of confidential data on millions of Sony PlayStation users did constitute a "publication" of private information, as required by the relevant insurance policy, but that the cyberattack nonetheless did not trigger the insurers' obligation to defend Sony from resulting litigation.

Insurance industry observers had eagerly anticipated the panel's ruling on Sony's appeal, which would have been one of the first appellate-level decisions in a data breach coverage case.

During **oral arguments** on Feb. 25, counsel for Sony contended that New York Supreme Court Judge Jeffrey K. Oing had erred when he found that Sony's coverage **couldn't be triggered** through the actions of third parties — in this case, the hackers who stole confidential information on tens of millions of Sony PlayStation Network users.

According to Sony, the policy provided coverage for publication of the information "in any manner," regardless of whether the publication was carried out by the policyholder or by a third party.

An attorney for Zurich, meanwhile, countered that the term "in any manner" refers to the medium used for publication, not to what party is doing the dissemination. The publication has to be carried out by the policyholder for coverage to apply, according to the insurer.

The breach of Sony's network, which allows users to play video games with other PSN users around the world, was one of the largest recorded data security breaches at the time. The hackers stole personal information including names, addresses, birth dates and, potentially, credit card and bank account information. Sony shut down the network for about a month while dealing with the breach.

Zurich later filed the current lawsuit against Sony and a slew of its insurers to determine coverage obligations, drawing the interest of both policyholder and insurer-side attorneys.

Sony is represented by Benjamin D. Tieovsky and Stephen G. Foresta of Orrick Herrington & Sutcliffe LLP.

Zurich is represented by Kevin Coughlin and Steven D. Cantarutti of Coughlin Duffy LLP. Mitsui is represented by Robert Marshall of Nicolaides Fink Thorpe Michaelides Sullivan LLP. National Union Fire Insurance Co. of Pittsburgh, Pa., is represented by Marc S. Voses of Kaufman Dolowich & Voluck LLP.

The case is *Zurich American Insurance Co. v. Sony Corp. of America et al.*, case number 651982/2011, in the Supreme Court of the State of New York, Appellate Division, First Department.

--Additional reporting by Stewart Bishop. Editing by Rebecca Flanagan.

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