



Business Counter-Sues Bank in Fraud Dispute

Texas Company Says it 'Won't Be Bullied'

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The Texas machinery company that was **sued by its bank** after a data breach has filed **a countersuit** against the institution, saying it "won't be bullied."

The case pits Plano, TX-based **Hillary Machinery, Inc.** against **PlainsCapital Bank**, a \$4.4 billion institution headquartered in Dallas. **Hillary was defrauded by cyber thieves who made ACH transactions in excess of \$800,000 in November 2009. The bank was able to get back some of the money for the company. But when Hillary demanded to be compensated for more than \$220,000 that wasn't recovered, PlainsCapital Bank filed a federal lawsuit against Hillary, asking the court to declare its security measures 'commercially reasonable.'**

"In my 16 years of practicing law, PlainsCapital Bank's claim against Hillary Machinery is unique," says Patrick Madden, Hillary Machinery's counsel. "Banks have traditionally been responsible for taking commercially reasonable steps to ensure the security of their account holders' funds. It was surprising to me that PlainsCapital sued the victim, its customer, in federal court."

The company, he adds, is determined to fight back. "While there have been relatively few court opinions that address the matters at issue in this case, we believe that public policy and a growing volume of legal precedent support Hillary Machinery's position," Madden says.

"PlainsCapital should drop its lawsuit and instead use its resources to work to change current law to clearly and unambiguously extend the same protections afforded to consumers to small businesses," says Troy Owens of Hillary Machinery.

PlainsCapital Bank representatives did not respond to requests for comment on the Hillary countersuit.

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