

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
COMMERCIAL COURT

B E T W E E N:-

JUSTCARD PLC

Claimant

- and -

CYBERSAFE LTD

Defendant

**WITNESS STATEMENT
OF PHILIP FRYE**

I, Philip Frye, of Cybersafe Ltd, 132A Gracechurch Street, London EC3 will state as follows:-

1. I am an underwriter employed by Cybersafe Ltd, specialising in cyber risks cover. I have been writing this sort of risk since 2004 and, without being immodest, I think I am recognised as one of the most experienced underwriters in this particular market.

Inception

2. On 1 December 2010, Mr Jarvis of JPG came to see me to ask if I would quote for cyber risks cover for JustCard plc.
3. It is not my usual practice to ask brokers to complete proposal forms in relation to cyber risk cover, because the information I need to know is too detailed and complicated easily to be summarised in a proposal form. Rather, I ask to see documents relevant to the software systems used. In very complicated cases, I might instruct a specialist IT Consultant to review the security aspects of their software systems, so that I can rely upon an independent investigation before agreeing to write the risk. In this particular case, JustCard provided sufficient documentation and I therefore did not see the need for any such independent report.
4. Mr Jarvis, among other things, gave me a copy of the Operating Manual for the ProcessSys software, which had quite a lot of details about the security aspects of the software. I had, in fact, heard of ProcessSys because when it was first available it was among some of the most advanced software in guarding against cyber attacks. I noted that the software appeared to have incorporated provisions to deal with malicious attacks consistent with the Cyber Security Guidance version 3.16. All these types of software are constantly undergoing revisions and upgrades to improve them and, in particular, to make them more resistant to cyber attacks. I presumed that version 3.16 was the most up to date version of the software. On the basis of what I had been told about ProcessSys and JustCard generally, I agreed to quote as lead and gave Mr Jarvis my premium quotation, which was accepted. The policy was written on Cybersafe's standard terms.

Crisis management costs

5. I was informed of the cyber attack on, I think, 2 February 2011. On that day, I was attending a conference in Miami, Florida. However, I was able to read emails on my BlackBerry, and to take telephone calls in relation to this attack, which seemed to me to be relatively serious.
6. Although JustCard did notify me (through JPG Brokers) of the attack, they did not thereafter give any further details of what had occurred or the remedial steps that they put in place. I understand that they employed well-known public relations consultants, Aterbury LLP shortly after the attack and significant costs were incurred by them in “crisis management”, namely seeking to limit the effects of publication of the attack in the media. However, I was never asked to approve any such costs either before they were incurred or at all.
7. It is my habitual practice carefully and promptly to consider requests for the approval of crisis management costs, because I recognise that it is of vital importance to my customers that crisis management policies are put in place as quickly as possible. Indeed, because of my experience in this particular area, I often find that I have some useful and constructive proposals to make. Unfortunately, I was not given the opportunity to do so in this particular case. The Policy requires that insureds seek underwriters’ approval prior to incurring such costs, if they are to be recoverable, in order to ensure that the costs are sensibly and carefully targeted upon important issues. I have declined to pay this aspect of the claim precisely because the provisions are important and there appears to be simply no proper reason for JustCard to have ignored them.

Inducement

8. I understand that an update (ed. 3.17) was available for ProcessSys in November 2010 which JustCard chose not to purchase for financial reasons. Instead JustCard appear to have been happy to run the risk of an attack. I was not told about this at the time. Subsequently (after the attack by SpookNet) I learned of this. I was shocked by JustCard’s lack of prudence in this regard.
9. Had I been told in December 2010 that JustCard had not upgraded its software to edition 3.17 I would have required, as a condition of cover, that this upgrade be installed, because out-of-date security protection materially increases the risk of a cyber attack being successful.

STATEMENT OF TRUTH

I believe that the facts stated in this witness statement are true.

Signed: **Philip Frye**

Dated 9 June 2011