

Encouraging Union Members to Bombard Construction Firm With Phone Calls and Emails Justifies Claim Under Computer Fraud and Abuse Act

By Kevin J. O'Connor, Esq.*

In an novel interpretation of the federal Computer Fraud and Abuse Act (CFAA), the Sixth Circuit Court of Appeals in Pulte Homes, Inc. v. Laborers' International Union of N.A., 2011 U.S. App. Lexis 15828 (6th Cir. Aug. 2, 2011) ruled that a construction firm stated valid claims under the CFAA against a laborers' union for actively encouraging its supporters to bombard the construction firm's email and phone systems with messages opposing the employer's position on labor issues.

Relying on the Third Circuit's holding in United States v. Carlson, 209 F. App. 181, 185 (3d Cir. 2006), the Court in Pulte Homes recognized the employer's claim for civil damages against the union for inundating the builder's email and phone systems with messages as part of protests over the employer's business practices. The employer claimed that the campaign clogged its email system, prevented customers from getting through, and disrupted its normal business operations, and sued for violation of the CFAA and various state laws. The district court dismissed the CFAA claim, finding that the union did not make unlawful transmissions to the company's computer system. The employer appealed, and the Sixth Circuit reversed the decision below to the extent that the court had dismissed the CFAA transmission claim.

The appeals court found that the employer adequately stated a transmission claim under the statute. To state such a claim, a plaintiff must allege that a defendant "knowingly" caused the "transmission" of a program, code, or command that intentionally caused damage to a protected computer. It held that the union's communications constituted "transmissions" and that the company's phone and email systems were protected computers. It also held that the employer had properly alleged that the union acted with the requisite intent to cause damage and that the union actu-

ally did cause damage. Under the CFAA, “any impairment to the integrity or availability of data, a program, a system, or information” qualifies as “damage.” The union-prompted emails and calls were alleged to have overwhelmed the employer’s phone and email systems rendering them, if not useless, then at least greatly diminished. “We conclude that a transmission that weakens a sound computer system — or, similarly, one that diminishes a plaintiff’s ability to use data or a system — causes damage,” the appeals court wrote. “LIUNA’s barrage of calls and e-mails allegedly did just that.” Because the employer alleged that the transmissions diminished its ability to send and receive calls and emails, it sufficiently asserted a claim for statutory damages under the CFAA.

The decision in Pulte Homes provides both a good explanation for the pleading standards for a transmission claim under the CFAA, and a summary of the dangers to organizers of protests which utilize electronic media for purposes of disrupting business to bring attention to social issues.

*This blog is maintained by Kevin J. O'Connor, Esq. The views expressed herein are those of the author and not necessarily those of the law firm Peckar & Abramson, PC.