August 27, 2015

Hackers Lend Hand to Consortium Defendants

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Recently, a group of hackers calling itself The Impact Team made news worldwide when it infiltrated AshleyMadison.com and proceeded to download and then publish the identities, contact information and e-mail addresses of many of the site’s members.

Members believed they were joining the site anonymously to locate other members interested in “married dating” — a quaint euphemism for, or prelude to, adultery.

Some websites have since organized the data into searchable databases or search engines. That’s right — anyone with an Internet connection can search say a friend, colleague or spouse’s e-mail address to determine whether that individual’s e-mail address was linked to a membership with the popular adultery website. A match creates the inference the e-mail address belongs to a member and, ostensibly, an adulterer.

In Illinois, one spouse may seek recovery for damages arising out of injury to the other spouse. Dini v. Naiditch, 20 Ill.2d 406 (1960). The claim has been defined as an “interference with the continuance of a healthy and happy marital life and injury to the conjugal relation.” Blagg v. Illinois FWD. Truck & Equipment Co., 143 Ill.2d 188, 199 (1991). Society, companionship and sexual relations between spouses, often referred to as consortium, are elements of compensable damages in Illinois in actions brought either by a husband or wife. Brown v. Metzger, 104 Ill.2d 30 (1984).

Just as Illinois recognizes consortium claims, Illinois recognizes defenses to consortium claims. One available method of defense is to investigate and discover facts relevant to the quality of the marital relationship. The existence of an extramarital affair is relevant to the defense of a consortium claim. Countryman v. County of Winnebago, 135 Ill.App.3d 384 (2nd Dist. 1985).

Countryman is worth examining. “The narrow question then is whether evidence that Margaret Countryman had found Richard Countryman in bed with another woman had any tendency to establish that the consortium was worth less than if that event had not occurred.” Countryman, 135 Ill. App. 3d at 388.

“In fact, the evidence was relevant ... it had some tendency to establish that Mr. Countryman’s affection for his wife and the companionship he was giving her were less than if the incident had never occurred. His indiscretion, in other words, is some evidence that the marriage may not have been an ideal one for him and so some evidence that his contributions to the emotional, intangible aspects of the relationship may not have been of as much value as they might have been without the indiscretion. The evidence thus, depending upon the weight given to it by the trier of fact, could support a finding that the consortium lost was less valuable than it would have been in the absence of the evidence.” Countryman, 135 Ill.App.3d 388-89.

“Second, it would be hard to overstate the potential corrosive effect of finding one’s spouse in bed with another person on the feelings of the finder. Reaction to it could be so extreme as to completely destroy the marriage or to profoundly change the nature of the relationship because of a severe loss of affection and trust and a deep sense of hurt on the part of the wronged spouse. While such extreme reactions are not inevitable, and it is even possible that such an event would not harm a relationship under some circumstances, there is a sufficient tendency for the event to have such an effect to make it relevant on the question of the value of the consortium lost.” Countryman, 135 Ill.App.3d 389.

Given that Countryman is law, it is not hard to imagine that the hack of AshleyMadison.com may end up indirectly aiding the defense of consortium claims.

The name, contact information and e-mail address of a party is now publicly available membership information. A positive hit suggests we have a Mr. Countryman on our hands.