

Have you ever wondered the legal recourse available to you if your identity were stolen? One action that is not currently available under New Jersey law is holding the employer of the identity thief liable for failing to verify the identification records of prospective employees at the time of hiring.

In *Piscitelli v. Classic Residence by Hyatt*, 408 N.J.Super. 83 (App. Div. 2009), an illegal alien purchased the victim's name and Social Security Number through an unknown third party and used the false identity for six years. The victim lived did not learn about the identity theft until she applied for unemployment benefits. New Jersey's unemployment agency denied the victim unemployment benefits because its records showed that she was employed. The victim contacted the purported employer on the State's records and learned about the imposter employed under her identity.

The victim filed suit against the imposter's employer, arguing a theory of negligent enablement of imposter fraud. She asserted that the identity theft would have been uncovered sooner if the imposter's employer had taken certain steps to verify the imposter's identity.

The court noted that legal scholars have argued for the creation of this theory as a new cause of action. However, the New Jersey court declined to expand the law in this way. The court acknowledged that "it is reasonably foreseeable that when an employer does not verify the identity of a prospective employee, the employee may commit identity theft and the identity theft victim, an innocent unrelated third-party, may be hurt." However, the court also noted that this situation did not lead to any misappropriation of the victim's assets or any substantial financial burden on the victim.

In declining to expand the law, the court also noted that imposing a duty on the employer to verify the identity of all prospective employees would result in a significant financial burden on the employer to protect unrelated third parties. The court also noted that New Jersey law already provides a civil remedy to the victim against the identity thief herself.

Although the court did not find it to be appropriate in the circumstances of this case to impose a duty of care on all employers to verify the identities of prospective employees, the court left the door open to recognize these types of actions later if presented with an appropriate set of circumstances. However, neither the New Jersey courts nor the legislature have recognized this type of third party imposter liability in the four years that have passed since this decision.