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This year marks 30 years since the inception of C5 Group.  
It is time to match our brand with the dynamic strides we have made.  
*See inside for details...*

September 29-30, 2016 ■ The Carlton Hotel Madison Avenue ■ New York, NY

2<sup>nd</sup> National Forum on

# DATA BREACH & PRIVACY Litigation and Enforcement



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*and others*

## VIEW FROM THE BENCH ON DATA BREACH, PRIVACY AND TCPA LITIGATION:



**Hon. Ruben Castillo**  
U.S. Dist. Ct., N.D. Ill.



**Hon. Michael Baylson**  
U.S. Dist. Ct., E.D. Pa.



**Hon. Leslie E. Kobayashi**  
U.S. Dist. Ct., D. Haw.



**Hon. Berle M. Schiller**  
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**Hon. James Carr**  
U.S. Dist. Ct., N.D. Ohio



**Hon. James P. O'Hara**  
U.S. Dist. Ct., D. Kan.



**Hon. Suzanne H. Segal**  
U.S. Dist. Ct., C.D. Calif.



**Hon. Daniel E. Knowles, III**  
U.S. Dist. Ct., E.D. La.



**Hon. Clifton Newman**  
South Car. Jud. Dept.

## SESSIONS INCLUDE:

- Class actions: data privacy & security breach case law, trends in key jurisdictions and circuit court rulings
- Telephone Consumer Protection Act (TCPA) and related case law claims
- Attorney/client privilege issues arising out of breach notification
- Cyber & data risk insurance and related litigation issues and coverage disputes including the *Travelers* decision
- Ransomware litigation: data breach notification issues, key jurisdictional differences, and cyber coverage issues
- Business to business litigation: vendor litigation, service provider litigation, and examining the ecosystem of payment card breaches
- Global impact of data breaches: finalization of the General Data Protection Regulation and managing cross border information
- Information governance and data management
- Big data: opportunity, challenges, and regulatory scrutiny

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a C5 Group Company  
Business Information in a Global Context

## The premier data breach and privacy litigation & enforcement conference is led by an unparalleled faculty of in-house counsel, federal judges, and the top outside counsel plaintiff and defense litigators and firms.

Data breach and privacy litigation cases are now more common than ever and there seems to be no slowing down. Class action suits are ramping up as new classes of plaintiffs are found after another breach is reported. Litigators face an uphill battle when defending and managing data breaches, class action law suits, privacy litigation, and responding to government enforcement actions.

Now, more than ever, there is simply no room for error in these cases. In response, *American Conference Institute* brings you its **2<sup>nd</sup> National Forum on Data Breach and Privacy Litigation & Enforcement**. Attendees will gain insight and learn from the nation's leading jurists and government agencies, in house counsel from companies across the country, and top plaintiff and defense litigators who are in the trenches daily.

In addition to unparalleled networking opportunities, ACI's Data Breach and Privacy Litigation and Enforcement conference will provide attendees with the latest insights and expert advice from our exceptional faculty including on:

- Class actions: data privacy & security breach case law, trends in key jurisdictions and circuit court rulings
- Telephone Consumer Protection Act (TCPA) and related case law claims
- Attorney/client privilege issues arising out of breach notification
- Cyber & data risk insurance and related litigation issues and coverage disputes including the *Travelers* decision
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- Business to business litigation: vendor litigation, service provider litigation, and examining the ecosystem of payment card breaches
- Global impact of data breaches: finalization of the General Data Protection Regulation and managing cross border information
- Big data: opportunity, challenges, and regulatory scrutiny

### BE SURE TO ALSO BOOK FOR THE WORKSHOP:

**Information Governance and Data Management: Your Complete Guide** – see page 6 inside

This event will fill up quickly, so **register now** by calling 1-888-224-2480, faxing your registration form to 1-877-927-1563, or registering online at [AmericanConference.com/DataBreach](http://AmericanConference.com/DataBreach)

### WHO YOU WILL MEET

- Chief privacy officers
- In house and general counsel
- Chief compliance officers
- Privacy Officers
- Attorneys specializing in:
  - Privacy
  - Data breach litigation
  - Class action litigation
  - Enforcement actions
  - Information security
  - E-commerce & technology



**ACI**  
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Business Information in a Global Context

This year marks 30 years since the inception of C5 Group.



It is time for a brand, logo and language in keeping with the dynamic strides we have made as a company. It is time for a brand that will take us forward for the next 30 years.

C5 Group, comprising American Conference Institute, The Canadian Institute and C5 in Europe, will unite under one central brand image, appropriately a globe. See how bringing together the power of people and the power of information can accelerate your growth and success.

Our new brand look and language will be fully revealed soon. Stay tuned for more exciting changes.

# DAY ONE

THURSDAY, SEPTEMBER 29, 2016

7:30 Registration and Continental Breakfast

8:00 **Chair Welcoming Remarks**

8:05 **In-House Viewpoints on Cyber Security Protocols, Data Breach and Privacy Litigation, and Managing Litigation Costs**

*Jennifer Harkins Garone*  
Global Privacy Lead, MSIT  
Microsoft

*Britton N. Murray*  
Vice President & Senior Counsel – Commercial Services  
Legal Department  
Hilton

*Matthew Haies*  
Senior VP, General Counsel  
Xaxis

*Nestor J. Rivera*  
Executive Privacy & IT Counsel  
HIPAA Privacy Officer  
GE Healthcare

*Arpan A. Sura*  
Counsel, Litigation & Financial Practices  
Sprint

*Timothy J. Nagle*  
VP & Chief Privacy Counsel  
Prudential Financial Inc.

*Christopher T. Pierson*  
EVP, General Counsel & Chief Security Officer  
Viewpost

**Moderator:**  
*Liisa M. Thomas*  
Partner  
Chair, Privacy and Data Security Practice  
Winston & Strawn LLP

9:25 **Class Actions: Data Privacy & Security Breach Case Law, Trends in Key Jurisdictions and Circuit Court Rulings, New Class Certification Issues, Novel Standing, Causation, Damages, Injury and Actual Harm Nuances, and How the Spokeo and PF Chang Decisions Will Change the Landscape**

*Eric H. Gibbs*  
Attorney  
Girard Gibbs LLP

*Janis Kestenbaum*  
Partner  
Perkins Coie LLP

*Ronald I. Raether, Jr.*  
Partner  
Troutman Sanders LLP

- Examining class action suits jurisdiction by jurisdiction, involving data breach cases
- How have the circuit courts held? How have the state courts held?
- Different decisions in the last 6 months
- Rule 23 Issues: How are Rule 23 issues brought up in the context of litigation
- Class Certification: seeking and defending against class certification; best motion practices involving class cert; what survives summary judgment and what does not?; class certification case law; circuit splits
- Standing and damages: *Spokeo* – interpreting the *Supreme Court* ruling on standing; *PF Chang* – imminent harm confers standing; Circuit courts are not aligned as to when you have standing and show actual damages; Is the individual responsible or the provider responsible?; “Threat of harm” issues – Determining whether the consumer has suffered damages
- Plaintiff’s attorney involvement: how and why plaintiffs decide to sue; what makes a good case for plaintiffs?; how do plaintiffs become named plaintiffs?; lawsuit on a contingent basis; Attorney’s fees
- Consolidating cases before MDL panel
- Arbitration clauses?
- Class action settlements – settlement value; settlement structure and implementation; judicial approval and scrutiny; objectors

10:45 Morning Break

10:55 **Responding to and Evaluating Claims Involving the Telephone Consumer Protection Act (TCPA) and Related Case Law Claims: Impact of the FCC Order Regarding Clarification on Telemarketing Rules, Factoring in Key State Legislative Activity From Different Jurisdictions, and Litigation Over Collection and Use of Online or Mobile Information**

*Nancy L. Perkins*  
Counsel  
Arnold & Porter LLP

*Heather J. Enlow-Novitsky*  
Of Counsel  
Vorys, Sater, Seymour and Pease LLP

### **TCPA Litigation**

- TCPA violations; TCPA compliance; TCPA litigation ramping up as consumers receive more texting and phone messages; More companies are using text messages to reach out to consumers; Litigation is emerging
- Privacy issues related to robo dialing

- What authority does the FTC have in this type of privacy litigation?
- How are plaintiffs bringing claims?
- Direct marketing via phone
- Standing – under TCPA you can have standing without injury
- Getting rid of TCPA if you can get rid of class members
- Impact of the FCC order involving clarification on telemarketing rules, interpretation of rules, and standards; Private cause of action, lawsuits that followed after the order was issued

#### FTC Authority

- FTC authority as defined under Section 5 of the FTC act or state law equivalent of the mini FTC act (unfair and deceptive practices); Standard that is vague and difficult to prove
- New issues related to settlement regarding improper release of personal information or issues in the security context

*Arlene Knighten*  
Attorney Supervisor  
Louisiana Department of Insurance

#### **Moderator:**

*Joseph P. Borg*  
Director  
Alabama Securities Commission

#### Federal

- Enforcement actions from the FTC based on the FTC act
- CFTC or Federal Reserve for financial institutions
- HHC or OCR for healthcare data breaches
- CFPB enforcement of data breach/cyber security issues following its consent order against Dwolla, Inc. alleging misrepresentation of security practices
- Increased scrutiny from the SEC and FINRA on cyber security

#### State

- View from different states and case examples specifically
- Breach notification letters
- Multi state agency investigations: Federal investigation can happen as well as state investigations; Did you follow all the right protocols?; What does your information security program look like?; Do you have encryption?; Can you enter into protracted negotiation with state attorney generals
- State attorney general's activity in New York: Request for information; Conducting the investigation; Proposals for assurance of continuance; Laying out factual statement and providing remediation; Negotiation; Settlement; Trial
- California attorney general enforcement actions; Number of forms and notification if a public or government funded entity

## 12:00 Networking Luncheon

### 1:00 **Federal and State Enforcement for Invasion of Privacy, Data Breaches, Failure to Comply with Notification Statutes Including the Impact of Recent CFPB Consent Orders for Misrepresentation of Security Practices, and Increased Focus from SEC and FINRA Regarding Cyber Security**

*Travis LeBlanc*  
Chief of the Bureau of Enforcement  
FCC

*Deborah Marrone*  
Assistant Regional Director  
Federal Trade Commission – Northeast Region

*Vincente Martinez*  
Chief, Office of Market Intelligence,  
Division of Enforcement  
U.S. Securities and Exchange Commission

*Prashanth Mekala*  
Supervisory Special Agent  
New York Field Office  
FBI

*Zinethia L. Clemmons*  
Senior Health Information Privacy Specialist  
HHS

*Victoria Chou*  
Special Assistant United States Attorney  
United States Attorney's Office  
Central District of California

*C. Brad Schuelke (invited)*  
Assistant Attorney General  
Consumer Protection Division  
Texas Office of Attorney General

*Steve Kinion*  
Director, Bureau of Captive and Financial Insurance Products  
Delaware

2:40

### **Global Impact of Data Breaches: Finalization of General Data Protection Regulation Recently Passed by the EU, Right to be Forgotten Law in Europe, Compliance with EU Law, EU/US Privacy Shield, and Managing Cross-Border Information**

*Darren A. Bowie*  
Chief Privacy Officer and Associate General Counsel  
Global Legal, Compliance, and Regulatory  
AIG

*John Kropf*  
Corporate Privacy Executive  
Northrop Grumman Corporation

*James Shreve*  
Counsel  
BuckleySandler LLP

*Ryan P. Blaney*  
Member  
Cozen O'Connor

- EU fining Google on Right to be Forgotten; Compliance with EU law is costly as the Google case is an example
- How to manage cross border of information
- Finalization of general data protection regulation recently passed: Takes into effect 2 years from now; Expanded territorial scope; Stricter obligations; Immediate impact of member states in the EU



- EU/US privacy shield: Mechanism of transferring data from EU to US; Finalized summer 2016; Self certification process; Privacy shield replacing safe harbor
- Breach notification in the international context
- A closer look at Latin America and Asia and its data privacy requirements

### 3:40 Afternoon Break

### 3:50 Ransomware Litigation: Data Breach Notification Issues, Key Jurisdictional Differences, and Cyber Coverage Issues

*David Hankin*  
CEO

Alfred Mann Foundation for Scientific Research

*Jonathan L. Schwartz, Esq.*  
Partner  
Goldberg Segalla

*Nace Naumoski*  
Partner  
Stewart Bernstiel Rebar & Smith

- Jurisdictional differences of how to handle ransomware litigation in terms of whether it's a data breach and whether there is unauthorized use of data
- Determining whether ransomware litigation requires notification
- From an insurance standpoint is it lawful to provide coverage when you are engaging in criminal activity (i.e., paying ransom in bitcoins to get the data back)

### 4:45 Cyber & Data Risk Insurance and Its Related Litigation Issues and Coverage Disputes Including the *Travelers Decision Finding Cyber Coverage in a CGL Policy*

*Elizabeth Rogers*  
Shareholder | Cybersecurity, Privacy and Crisis Management  
Greenberg Traurig, LLP

*Linda D. Kornfeld*  
Partner  
Kasowitz, Benson, Torres & Friedman LLP

*Brian J. Dusek*  
Partner  
McCullough, Campbell & Lane LLP

- How cyber & data risk insurance is important in the litigation context
- Liability issues
- Coverage issues
- Need for comprehensive insurance

#### Underwriting Issues

- Cyber approach that is risk based
- Interface of underwriting and claims
- Quantifiable data
- Using property/casualty as an example you can make determination based on aging structure and mitigate loss/ calculate versus cyber arena where calculations can't be made and limits are much lower

#### Litigation Against Insurance Companies

- Niche market around drafting, writing of policies to cover data breach and cyber breaches
- Examining the growing cottage industry of how to litigate disputes
- Litigating coverage disputes

#### Impact of the *Travelers Decision* on Finding Cyber Coverage in a CGL Policy

- Analysis of the court's decision finding cyber coverage in a CGL Policy
- Impact of insureds not using the ISO form which excludes cyber coverage
- Finding coverage for unreasonable publicity of medical records

### 5:40 Attorney/Client Privilege Issues Arising out of Breach Notification: Attorneys' Ethical Duties When Clients Seek Advice During a Breach, Examining the Communication That is Considered Privileged, and Determining Whether Forensic Reports Should be Turned Over (featuring 30 minutes of Ethics credit)

*Dominic A. Paluzzi*  
Member  
McDonald Hopkins PLC



*Nicole Hughes Waid, Esq.*  
Attorney  
Fisher Broyles, LLP

- Use of forensic experts
- In litigation, plaintiffs are always looking for forensic reports and defendants are concerned about turning those over
- What communication is considered privileged between the client, attorney and IT professional?
- What is the attorney's obligation with respect to discovery issues?
- How does the attorney's role as a breach coach affect attorney/client privilege; Determining whether the breach report is discoverable
- Application of attorney/client privilege to documents part of security audit or part of incident response
- Annual security audit is protected because there was a breach
- Forensic reports by the company in response to breach or documents prepared in annual report
- Application of *Genesco* to attorney/client privilege and whether it applies to request from regulators

### 6:30 Conference Adjourns



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## DAY TWO

FRIDAY, SEPTEMBER 30, 2016

7:30 Continental Breakfast

8:00 **View From the Bench on Data Breach, Privacy and TCPA Class Actions & Litigation: Presenting Technology to Fact Finders and Settlement & Discovery Strategies in These Complex Cases**



*Hon. Ruben Castillo*  
U.S. Dist. Ct., N.D. Ill.



*Hon. Michael Baylson*  
U.S. Dist. Ct., E.D. Pa.



*Hon. Leslie E. Kobayashi*  
U.S. Dist. Ct., D. Haw.



*Hon. Berle M. Schiller*  
U.S. Dist. Ct., E.D. Pa.



*Hon. James Carr*  
U.S. Dist. Ct., N.D. Ohio



*Hon. Suzanne H. Segal*  
U.S. Dist. Ct., C.D. Calif.



*Hon. Daniel E. Knowles, III*  
U.S. Dist. Ct., E.D. La.



*Hon. James P. O'Hara*  
U.S. Dist. Ct., D. Kan.



*Hon. Clifton Newman*  
South Car. Jud. Dept.

**Moderator:**

*Brian J. Dusek*  
Partner  
McCullough, Campbell & Lane LLP

10:00 Break

10:15 **Business to Business Litigation: Vendor Litigation, Service Provider Litigation, and Examining the Ecosystem of Payment Card Breaches**

*Cody Wamsley*  
IT Risk & Information Security Manager  
American Express

*Jeffrey Taft*  
Partner  
Mayer Brown

- Business associates as a covered entity: Breach occurs and vendor is in the covered entity agreement; Litigation surrounding around the vendor; 3rd party vendor makes the assessment; Retailer who is at fault for breaches; Issuing bank loses out and go back to acquiring bank and sweep money out of retailer's bank; Arguments the retailer makes that the fault is not their own
- Service provider litigation
- Payment card breaches

11:15 **Big Data: Opportunities, Challenges, and Regulatory Scrutiny**

*Corey M. Dennis, CIPP/US*  
Associate Counsel & Privacy Officer  
PPD

*Noga Rosenthal*  
General Counsel and VP, Compliance & Policy  
Network Advertising Initiative

- Sharing data with third parties and selling and monetizing data
- Privacy/security concerns associated with personal information
- FCRA Act – certain types of data collection relating to credit reports and credit reporting agencies
- FTC's increased regulatory scrutiny on using data to discriminate against certain class of people such as lower income, etc.

12:15 Conference Adjourns;  
Lunch for Workshop Speakers and Attendees

## POST-CONFERENCE WORKSHOP

FRIDAY, SEPTEMBER 30, 2016 (1:15 PM – 3:15 PM)

### Information Governance and Data Management: Your Complete Guide

*Ronald Raether*  
Partner  
Troutman Sanders LLP

*Elizabeth Rogers*  
Shareholder | Cybersecurity, Privacy and Crisis Management  
Greenberg Traurig, LLP

- Preparing the right documentation to defend a case in the event of litigation/regulatory investigation
- Litigation preparation
- Right programs for governance, protocols and controls
- How to avoid a bad email
- How is IT organization and planning; Taking what IT is already doing and build it to make it so that they're not creating bad documents
- Getting CFO and risk managers and the business in the role as well



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**Wendy Tyler**

Director of Sales, American Conference Institute

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American Conference Institute  
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New York, NY 10010

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