

- 2..... Data Breach Plaintiffs Receive Mixed Reception in Florida Courts
- 3..... Preparing for Worksite Enforcement & Form I-9 Compliance during a Second Trump Administration
- 4..... Welcome New Members!
- 5..... Event Photos

- 8..... Upcoming Events
- 9..... Chapter Leadership
- 9..... Executive Director Note

FOCUS

President's Message

Justin Carlson

Happy holidays and a prosperous 2025! I am penning this article to you on Thanksgiving morning, a holiday dedicated to unity and gratitude. It may be difficult to channel those emotions in the aftermath of yet another contentious election cycle, particularly in an era where election outcomes typically leave one side exuberant, the other side devastated, and those who did not identify with a side feeling like they have no place in the system. I always keep in mind that, despite the pandemic slogan, we rarely live in unprecedented times. History doesn't repeat itself exactly, but there are often similarities to the past, and things are rarely as good or bad as they seem. All this is to say, no matter the perceived challenge: we've made it before, we'll make it again!

The best part of precedent, other than as a tool for lawyers, is the traditions we derive from it. The origin of a tradition becomes less important as the years of celebrating it shape the tradition into something new and relevant. And so we progress from Native Americans helping European colonists stave off starvation in an event devoid of turkeys to the President pardoning a turkey while millions of other turkeys are being served for dinner in an event that is quintessentially American, but features food that does not make an appearance on American dinner tables the rest of the year.

And as soon as the leftovers are placed in the fridge, many of us will shift to celebra-

tions with their origins in the seasonal solstice, religious stories, and the year end of a calendar invented by the Romans and tweaked by a pope in the sixteenth century. All of which have now coalesced into a generalized American tradition of gathering once again (perhaps with turkey making its second and final appearance at the dinner table), giving gifts, and culminating in champagne and fireworks set to the tune of an 18th century Scottish song that no one knows the words to.

While where we've ended up can seem absurd given the starting points, as these traditions have evolved, the constant thread has been to set aside time each year to gather with family and friends and celebrate our shared bonds. I am immensely grateful to be bonded to all of you through our profession and through this chapter of the ACC. I thank our sponsors, without whose generosity we cannot deliver any programming throughout the year. I thank our members for their participation in those programs. I also thank our volunteer Board of Directors for giving their time, the most precious commodity. And finally, thank you to our incredible Executive Director, Christina Kim, who has made all of this happen seamlessly for over a decade!

ACC South Florida will be continuing our traditions as we wrap up 2024 and begin a new year. Our annual holiday parties are taking place in Delray Beach and Miami on December 4 and 12, respectively. 2025



will again feature our signature events, including the Progressive Dinner in the spring and the CLE Conference in the fall, as well as excellent programs each month, including social events, educational sessions, and pro bono and community service opportunities.

We are also continuing our membership push to reach 600 members for the first time in our chapter's history. I again ask our members to please refer a friend and spread the word about the value you derive from the chapter!

As I leave you to head to my family's dinner, followed by our holiday traditions of setting up a Christmas village and giving Knaus Berry Farm cinnamon rolls, I wish you a very Happy Thanksgiving, Merry Christmas, Happy Hannukah, Happy Kwanza, Happy Solstice, and/or happy new year to all those celebrating! And if you want to break with tradition and substitute the turkey for something tastier (like honey baked ham!) I will certainly understand and support you.

Data Breach Plaintiffs Receive Mixed Reception in Florida Courts

By Kenneth Duvall & Kelly Ruane Melchiondo, Bilzin Sumberg

In this day and age, many companies regularly handle their customers' personal data and face a constant risk of a data breach. If a hacker is successful, the consequences can include not only reputational damage and potential loss of customers, but also a (virtually) inevitable class action lawsuit.

Over recent years, plaintiffs in data breach cases tested various legal theories across the country, including here in Florida federal courts. A fresh case in the United States District Court for the Southern District of Florida has shed some light on which theories are viable—and which are not.

In the *In re Fortra File Transfer Software Data* litigation, plaintiffs from across the country have sued Fortra LLC, whose file transfer software was hacked in January 2023. The plaintiffs brought a wide variety of claims, ranging from common law negligence, implied contract and unjust enrichment claims, to statutory claims from over a dozen states. This sprawling multi-district litigation ultimately landed in the court of District Judge Rodolfo Ruiz, who recently ruled on the defendants' motion to dismiss.

Judge Ruiz's ruling was a mixed bag. On the one hand, Judge Ruiz did not dismiss the negligence and unjust enrichment claims, nor did he dismiss many of the statutory claims from various states. On the other hand, he did dismiss, with prejudice, the breach of implied contract claim as well as statutory claims from the remaining states.

Notably, Judge Ruiz recognized a split in authority among Florida federal courts as to when an implied contract arises in the data breach context. Some courts have found that a company gives consumers implicit assurances that it will protect their data when the company requires the consumers to provide it with their data as part of the business transaction. However, other courts, including Judge Ruiz, have found that a consumer's unilateral and subjective expectations are not a

substitute for the meeting of the minds required to establish a contract, even an implied one.

Judge Ruiz also dismissed plaintiffs' claims for actual damages under the Florida Deceptive and Unfair Trade Practices Act (FDUTPA). The plaintiffs alleged "actual damages" in the form of the diminution in value of the healthcare services they received. The plaintiffs also alleged that they would not have paid as much for the healthcare benefits had they known the truth about the defendants' data security practices. But FDUTPA does not apply to claims for damages to property other than the property that is the subject of the consumer transaction. Judge Ruiz found that the plaintiffs failed to plausibly allege that the healthcare services they received—which were the subject of the transaction—diminished in value as a result of the data breach. In other words, the plaintiffs' damages from the breach were only consequential (not actual) damages, which are not recoverable under FDUTPA.

Even with these victories against the implied contract and FDUTPA claims, the defendants will still face the remaining common law and statutory claims. With that in mind, here are some safeguards for companies to implement now—before a data breach occurs.

Lessons for Companies.

Companies will likely be held to their privacy policies. Companies should review their privacy policies (or analogous documents) to determine whether they are over-promising, and under-delivering, on data protection. Companies will be expected to comply with what they represent to consumers in their privacy policies. In the same vein, companies might be promising to take such actions within certain timeframes. If companies make promises to consumers, and plaintiffs can allege and prove that plaintiffs actually read and relied on broken promises, courts may well enforce them.

Companies must protect data regardless of what their policies say. Regardless of what a privacy policy says (or does not say), a company will be required to protect personal and financial information if the company compels consumers to turn over such information to process a transaction. Courts are likely to impose such a duty on a company as a matter of law (under a negligence, unjust enrichment, or implied contract framework)—even if the company attempts to draft creatively around that duty in a privacy policy.

Companies will be held to an "industry custom" standard. A company will be held to "industry custom," i.e., "commercially reasonable" standard in protecting consumer data. Like any other legal standard based on "custom" or "reasonableness," there is no automatic black-and-white test to determine whether a company's practices are legally sufficient. Certain state legislatures have even attempted—and failed—to codify the "reasonableness" standard. Still, a company would be well served to consult with someone who can advise on what other companies in the industry are doing. Depending on the type of data a company collects, stores, and processes, the size of the company, and its risk tolerance, the company might not need to adopt the most comprehensive data protection practices to avoid liability. The company might simply need to ensure that it does not fall behind its peers and competitors when it comes to adopting security measures. Unless and until there is a unified regulatory scheme in this area of the law, these decisions will remain ad hoc, and the outcome of lawsuits will depend largely on the unique factual circumstances and allegations presented.

Companies are often sued when their vendors suffer a data breach. Even if it avoids a breach on its own systems, a company must still worry about potential breaches of its data hosted by vendors. For example, the case discussed above takes its name from the vendor, Fortra,

continued on page 3

continued from page 2

but the vendor is not the only defendant to the litigation. The company for which the vendor hosted the data is also a defendant. To anticipate these vendor breaches, companies should carry their own cybersecurity insurance written with such events in mind, and should also require their vendors to carry their own cybersecurity insurance, listing the company as an additional insured. Insurers no longer allow “silent” coverage of cybersecurity events under general policies—specific policies are needed to cover data breach claims. As a complementary safeguard, companies should also negotiate with their vendors indemnification and defense of data breach claims as material provisions in their contracts.

Authors:

Kenneth Duvall

Kenneth Duvall is a Partner in Bilzin Sumberg's Trial & Litigation Group, in addition to serving as Assistant General Counsel for the firm.

Ken's experience includes defending national and international clients in product liability, securities litigation, white collar crime and general commercial litigation. Before entering private practice, Ken worked for two years as a law clerk in the Missouri Court of Appeals, gaining substantial courtroom experience at the appellate level. In addition to maintaining a successful practice, Ken has authored a number of scholarly articles and works, including co-authoring three legal reference guides: Product Liability Desk Reference: A Fifty State Guide; Business Torts: A Fifty State Guide; and a Criminal Law Handbook.



Kelly Ruane Melchiondo

Kelly Ruane Melchiondo is a Partner in Bilzin Sumberg's Construction Law and Litigation Group, and is a member of the firm's Data Security & Privacy Team. Her cybersecurity practice focuses on counseling clients on safeguarding their data and private information by drafting and implementing policies for data security and strengthening internal controls, assisting clients with data breach prevention and response including reporting to and interacting with state regulatory and law enforcement agencies tasked with enforcing state data privacy laws, and client counseling to strengthen internal data security controls.



Preparing for Worksite Enforcement & Form I-9 Compliance during a Second Trump Administration

By Sarah Hawk, Partner & Chair, Immigration and Global Mobility, Barnes & Thornburg

Any administrative transition brings with it the propensity to alter the status quo, and the passing of the baton from President Biden to President-elect Trump is no exception to that rule. In particular, U.S. immigration and corresponding enforcement efforts may experience changes.

Based upon enforcement rhetoric from the President-elect and proposed administration leadership, as well as an increase in Immigration and Customs Enforcement (ICE) audits during the first Trump presidency, the U.S. may see heightened scrutiny with respect to Form I-9 compliance in 2025 and beyond. This will likely result in an increase in Form I-9 audits, raids, and worksite investigations.

With the likely increase in enforcement in mind, employers should take steps to ensure compliance with I-9 and E-verify, as well as make lasting changes to U.S. immigration compliance efforts.

To prepare for the next administration, employers may take a few key steps:

- 1.) **Ensure the use of the correct version of Form I-9.** The latest version of Form I-9, introduced in 2023, increased electronic accessibility and provided more guidance with respect to acceptable documents. It also updated form language, advising employers on how to avoid discrimination in the Form I-9 process. At present, employers must use the Aug. 1, 2023, edition of Form I-9, which features an expiration date of either July 31, 2026, or May 31, 2027.
- 2.) **Update any internal I-9 policies to reflect the use of remote verification, if applicable.** With the new Form I-9, remote verification is permitted if the employer uses E-Verify and meets other requirements.

- 3.) **Implement annual compliance training for human resource and onboarding teams.** Ensure the teams understand the most recent changes to Form I-9, as well as new procedures and acceptable documents for verification of identity and work authorization.
- 4.) **Confirm the company's E-Verify policy.** E-Verify is currently voluntary with exceptions for federal contractors and certain state mandates, which now include more than 20 states that currently require E-Verify for certain public and private employers. The following states have E-Verify enrollment as a condition for some or all employers: Alabama, Arizona, Colorado, Florida, Georgia, Idaho, Indiana, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, Oklahoma, Pennsylvania,

continued on page 4

continued from page 3

South Carolina, Tennessee, Texas, Utah, Virginia, and West Virginia.

5.) Implement an annual internal I-9 audit. A best practice to ensure compliance is to conduct an internal audit of employment eligibility, especially in the event of a pending merger, acquisition, or other corporate restructuring. Audits provide an opportunity to correct internal practices by identifying specific issues, as well as highlight key patterns of errors in employment eligibility assessments. Audit findings also prompt more specificity with respect to internal training opportunities.

Further, internal audits enable employers to demonstrate good faith efforts in the event of an audit conducted by Immigration and Customs Enforcement (ICE), potentially reducing overall fees for viola-

tions. The “enhancement matrix” used by Immigration and Customs Enforcement considers certain aggravating and mitigating factors to calculate specific fines to be levied, with such factors including an employer’s good faith.

In addition to performing these internal audits, employers should seek counsel for correction of curable defects to mitigate liability. The correction of such defects can help employers avoid civil fines for I-9 paperwork violations, which typically range from \$281 to \$2,789 per violation. Conversely, an employer may incur steeper fines, ranging from \$698 to \$27,894 per worker, if the employer knowingly hired or continued to hire a worker without work authorization.

These five steps demonstrate a company’s good faith effort to comply with the Form I-9 process, as well as preserve a

company’s affirmative defense to a claim of knowingly employing undocumented workers. Perhaps most relevant for the next U.S. presidential term, these efforts may also keep employers out of the public eye.

Author:

Sarah Hawk

Sarah’s strategic mind and extensive understanding of current and emerging immigration legislation and trends have earned her national and international recognition. She provides crucial immigration counsel to domestic and multinational companies in various industries, including healthcare, financial services, hospitality, higher education, and technology.



Welcome New Members!

Yael Aufgang

Kaplan, Inc.

Debora Ayoub

Visa

Lyle-Andrew Booderas

Med-Lab Supply Company

Claudia Carballo

Chegg, Inc.

Christine Drobot

Chewy

Brendalyn Edwards

Universal Property & Casualty Insurance Company

Lisa Gefen

Kaplan Higher Education

Naomi Jackson

Thrasio, LLC

Mark Liberman

Lennar Corporation

Katherine Martin

The Hertz Corporation

Jasmine Moore-Mangone

Delta Sigma Theta Sorority, Inc.

Erin Murphy

NextEra Energy Resources, LLC

John Paré

Hanwha Power Systems Global

Alexiz Perez

Assurant, Inc.

Claudia Perrin

eXp Realty, LLC

Ashley Pinnock

Medtronic, Inc.

Joshua Rittenberg

GEI

Miraisy Rodriguez

Kaplan Higher Education

Luis Romero

Areas USA

Eduardo Sampaio da Silveira Gil

Mondelez International

Michael Serafino

Lennar Corporation

Susan Stearns

PayPal, Inc.

Nataly Suarez

Assurant, Inc.

Darwinson Valdez

Coastal Waste & Recycling, Inc.

Virginia Vega

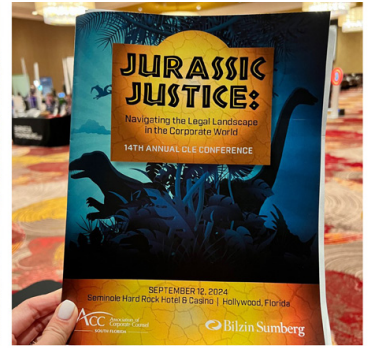
Assurant, Inc.

Aviva Wernick

Florida Crystals

EVENT PHOTOS

14th Annual CLE Conference



Sip, Swap & Share to Benefit the Lotus House – Presented by DLA Piper



Mini MBA – Presented by Foley & Lardner



PuttShack – Presented by Gunster



GC/CLO Dinner – Presented by FTI Consulting



Palm Beach New Member Happy Hour



We're Getting SOCIAL!

For the latest photos and details from our events, please be sure to follow ACC South Florida Chapter on Instagram and Facebook. On LinkedIn, join our group page exclusively for members. In addition, we are excited to now have a public ACC South Florida Chapter page for interaction with our sponsors, respective companies and everyone. On all of our social media platforms, feel free to tag ACC South Florida Chapter on your posts and hashtag #accsouthfl.

You can find updates, event information and more at:



accsouthflorida



@accsouthflorida



ACC South Florida Chapter

Sponsors for 2024

Platinum

Bilzin Sumberg

Gold

Gunster
Fisher Phillips
Nelson Mullins

Silver

Akerman
Barnes & Thornburg
FordHarrison LLP
Jackson Lewis
King & Spalding
Saul Ewing Arnstein & Lehr LLP
Shook Hardy and Bacon, LLP
Squire Patton Boggs
TCDI
Winston & Strawn

Bronze

Armstrong Teasdale
Carlton Fields
Fox Rothschild
FTI Consulting
Latitude
Littler
Robert Half Legal

Miami-Dade Progressive Dinner

Shook Hardy and Bacon, LLP (Premier)
OmniBridgeway (Dinner)
Carlton Fields (Dessert)

GC/CLO Dinner

Armstrong Teasdale
FTI Consulting

Social Event + CLE

Carlton Fields

Mini MBA

Foley & Lardner

Women's Event

Fisher Phillips
DLA Piper

Holiday Party

Barnes & Thornburg (Palm Beach)
Cozen O'Connor (Miami)

Newsletter Article

Barnes & Thornburg
King & Spalding

ACC South Florida Upcoming Events

JANUARY

JANUARY 23

Mixology Class
Presented by Nelson Mullins

FEBRUARY

WEEK OF FEBRUARY 10

Social Event
Presented by Bilzin Sumberg

FEBRUARY 20

Pro Bono: Advanced Directives Clinic
Legal Services of Greater Miami

MARCH

MARCH 1

Member Appreciation Event -
Savannah Bananas

WEEK OF MARCH 3

New Member
Happy Hour in Miami

Be on the lookout for calendar updates!

Chapter Leadership

President

Justin Carlson

CLO / General Counsel, Velocity Solutions, LLC

Immediate Past President

Aline Drucker

General Counsel, Invicta Watch Group

Treasurer

Warren Stamm

General Counsel, Newgard Group

Secretaries

Steven Blickensderfer

Lead Privacy Counsel, Krafton

Andres Mayor

Senior Counsel, Otis Elevator Company

Sponsorship Co-Chairs

Lucas Kurtz

Vice President of Legal Affairs
United States Sugar Corporation

Christopher Aird

Assistant General Counsel, MasTec, Inc.

Communications Chair

Sharaine Sibblies

AVP, Deputy General Counsel, Southeast Toyota
Distributors, LLC

Community Outreach Co-Chairs

Nikki Setnor

Managing Senior Counsel, ADP Total Source Inc

Eve Perez Torres

Senior Attorney, International Legal & Regulatory
Affairs, FedEx Logistics, Inc.

Membership Co-Chairs

Maritza Gomez

Senior Counsel, Employment, Gap, Inc.

David Brill

Managing Director, FTI Consulting

Executive Director

Christina Kim

Christina Kim
Executive Director

Executive Director Note

Dear Members,

What a whirlwind 4th quarter we have had! There have been so many creative, engaging, and fun events that have taken place the last few months and we are ending 2024 on a high note.

Our 14th Annual CLE Conference was DINO-mite (I promise, that is the last dinosaur pun I use) with over 300 attendees. Our sponsors not only provided excellent educational content but also brought their A-game for their exhibit spaces. We look forward to what our 15th Annual CLE Conference will bring – if you have any theme ideas, we are always open to hearing your thoughts!

We quickly pivoted from dinosaurs to cowboy boots as our members made their way to Nashville to ACC's Annual Conference. Although Hurricane Milton had other ideas and put a bit of a damper on our plans, we still got to enjoy lunch with our fellow South Florida members and attended some of Nashville's best parties thrown by our sponsors. Next year we will be in the City of Brotherly Love as we head to Philadelphia! If you have never been to a national conference, we highly recommend you attend.

In addition to all the events this quarter, we were also humbled to receive the Legal Services of Greater Miami's 2024 Equal Justice Pro Bono Champion Award. Thank you to all our members and sponsors who tirelessly give their time to help our local pro bono organizations – your dedication makes a big difference in our community.

As we close out the year, I want to thank our sponsors for their continued support– we can be active and engaged with our members due to your partnership. Thank you to our Board of Directors for their tireless dedication to making sure our Chapter continues to be one of the best in the world, and last but not least, to all our members for being the heart and soul of ACC South Florida.

Happy holidays and all the best in 2025!

Sincerely,

Christina Y. Kim

Executive Director, ACC South Florida



Carlos Cardelle, Nikki Setnor and Christina at the LSGMI Pro Bono Celebration