

**IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA**

CHRISTOPHER ZIMMERMAN, COREY
MIZELL, STEPHANIE DAWSON, and
MIKE LEWIS, individually and on behalf of
all others similarly situated;

Plaintiffs,

v.

SONYA LAZAREVIC; ZORAN
LAZAREVIC, SYLVIA DUDA; COGO'S
CO.; AND BRIAN HAENZE d/b/a AUTO
GALLERY & ACCESSORIES and as TAG
TOWING AND COLLISION,

Defendants.

CHRISTOPHER GRABOVSKI, individually
and on behalf of all others similarly situated;

Plaintiff,

v.

REALTY INCOME CORPORATION;
COGO'S CO; AND BRIAN HAENZE
D/B/A AUTO GALLERY & ACCESSORIES
and as TAG TOWING AND COLLISION,

Defendants.

CIVIL DIVISION – CLASS ACTION

No. GD-18-012068

**DECLARATION OF PATRICK D.
DONATHEN IN SUPPORT OF
PLAINTIFFS' APPLICATION FOR
ATTORNEYS' FEES, COSTS, AND
EXPENSES, AND SERVICE AWARDS
TO REPRESENTATIVE PLAINTIFFS**

CIVIL DIVISION – CLASS ACTION

No. GD-18-012294

Filed on behalf of Plaintiffs

Counsel of Record for this Party:

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**DECLARATION OF PATRICK D. DONATHEN IN SUPPORT OF PLAINTIFFS'
APPLICATION FOR ATTORNEYS' FEES, COSTS, AND EXPENSES, AND SERVICE
AWARDS TO REPRESENTATIVE PLAINTIFFS**

I, Patrick D. Donathen, pursuant 18 Pa. C.S.A. § 4904, hereby declare as follows:

1. I am an attorney with the law firm Lynch Carpenter, LLP ("Lynch Carpenter"), previously known as Carlson Lynch, LLP, which serves as Settlement Class Counsel in this action. I submit this Declaration in Support of Plaintiffs' Application for an Award of Attorneys' Fees,

Costs, and Expenses, and Service Awards to the Representative Plaintiffs in connection with the services rendered in the above-captioned actions and the proposed class action settlement with Defendant CoGo's Co. ("Cogo's" or "Defendant").

2. The statements herein are true to the best of my personal knowledge, information, and belief, based on Lynch Carpenter's books and records, information received from its attorneys and staff, and my review of documents submitted by our Co-Settlement Class Counsel firm, J.P. Ward & Associates, LLC ("J.P. Ward & Associates").

3. I served as proposed Settlement Class Counsel for Plaintiffs and participated in the prosecution of this action. Plaintiffs' counsel undertook this action on a contingent fee basis, meaning that to date we have received no payment for our services. We also advanced all litigation expenses, and to date have not received reimbursement for these from any source. Further, our agreements with our clients provided that we would not charge them for fees or expenses in the event of an unsuccessful outcome.

4. Settlement Class Counsel's time and expense records have been reviewed to confirm both the accuracy of the entries as well as the necessity for and reasonableness of the time and expenses expended in this litigation. As a result of this review, certain reductions were made to both time and expenses either in the exercise of billing judgment or to conform to my firm's practice. As a result of this review and related reductions, the time reflected in Settlement Class Counsel's lodestar calculation in ¶¶ 7 and 12 and the expenses incurred are reasonable in amount and were necessary to prosecute these actions and resolve the settlement before the Court.

5. During the course of this litigation, and as detailed herein, Settlement Class Counsel coordinated to divide work amongst the firms in an efficient and effective manner and in an effort to not unnecessarily duplicate time.

6. Set forth below in ¶¶ 8 and 13 is a summary reflecting the amount of time (after any applicable reductions) Settlement Class Counsel, including their firms' attorneys and professional staff (including at Settlement Class Counsel's predecessor firms) worked on these actions from the inception of the case in 2018 through today's date, and the corresponding lodestar value of that work. The schedules in ¶¶ 8 and 13 were prepared based upon daily time records maintained by Settlement Class Counsel in the ordinary course of business, and the lodestar calculations are based on the firm's current hourly billing rates, or the firm's equivalent rate for the biller as of their last date of employment.

7. The services Settlement Class Counsel performed on behalf of the Settlement Class include, but are not limited to the following: consulting with the representative plaintiffs, investigating the claims and editing the initial and amended complaints; responding to preliminary objections and appearing at oral argument before the trial court; drafting and serving discovery requests on CoGo's; drafting and serving discovery responses on behalf of the Plaintiffs; deposing Brian Haenze; reviewing documents produced by CoGo's; negotiating the proposed settlement; negotiating, drafting, and finalizing the proposed class action settlement agreement and release and related exhibits; soliciting bids from settlement administration firms and working with the chosen administrator (Analytics) to implement the notice program; and drafting and filing the motion for preliminary approval.

8. Lynch Carpenter's compensable time for which it seeks an award of attorneys' fees regarding this matter is summarized below:

Professional	Position	Hours	Rate	Lodestar
Kelly Iverson	Partner	33.4	\$950	\$31,730.00
Elizabeth Pollock-Avery	Partner	19.5	\$900	\$17,550.00
James McGraw	Associate	19.6	\$800	\$15,680.00
Roblin Bolea	Associate	15.8	\$650	\$10,270.00
Patrick Donathen	Associate	23.5	\$500	\$11,750.00
Jon Romanashin	Paralegal	0.7	\$275	\$192.50
Daniel Hart	Paralegal	1.9	\$275	\$522.50
Total		114.4		\$87,695.00

9. Thus, the total time for which my firm spent prosecuting these actions is 114.4, and the total lodestar value of these professional services is \$87,695.00.

10. The above hourly rates for Lynch Carpenter's attorneys and professional support staff are the firm's current hourly rates or the firm's equivalent rate for the biller as of their last date of employment. The hourly rates for attorneys and professional support staff in my firm are the same as the regular rates charged for their services in complex litigation. The time and lodestar spent preparing the Application for Attorneys' Fees and Expenses were excluded from the above values.

11. The firm's lodestar figures do not include charges for expense items. Expense items are billed separately, and such charges are not duplicated in the firm's current billing rates. Further, expense items do not contain any general overhead costs and do not contain a surcharge over the amount paid to the corresponding vendor(s).

12. Additionally, Lynch Carpenter incurred expenses in the form of filing fees and depositions. Expenses reports can be provided upon the request of Court.

13. Based on the records submitted to me by J.P. Ward & Associates, and my own familiarity with the tasks performed by that firm for purposes of the litigation, I am aware that J.P. Ward & Associates' reported hours and lodestar regarding these actions is as follows:

Professional	Position	Hours	Rate	Lodestar
Joshua P. Ward	Partner	32.4	\$450	\$14,580.00
Total:		32.4		\$14,580.00

14. Combined, the two firms representing Plaintiffs and the Settlement Class in these actions reported 146.8 hours necessary for the prosecution of these actions, and a total lodestar of \$102,275.00. Based on the ratio of the lodestar to the \$69,000.00 combined fee and expense request, Settlement Class Counsel's fee and expense request amounts to approximately 67% of their total lodestar.

15. The representative Plaintiffs performed valuable services for members of the Settlement Class by bringing their claims to Settlement Class Counsel for investigation, agreeing to serve as representative plaintiffs, verifying the initial complaints and amended complaints, remaining available to consult with Settlement Class Counsel when necessary regarding the progress of the litigation, participating in discovery, reviewing the progress of the litigation, and reviewing and signing the Settlement Agreement.

16. I have complex litigation experience, including working on numerous class action/complex cases: *Opris et al. v. Sincera Reproductive Medicine*, 2:21-cv-3072 (E.D. Pa.) (settlement class counsel); *In re: Philips CPAP, Bi-Level PAP, & Mechanical Ventilator Products Liability Litigation*, MDL No. 3014 (W.D. Pa.) (member of law and briefing committee); *In re: BPS Direct, LLC and Cabela's LLC, Wiretapping*, MDL No. 3074 (E.D. Pa.) (member of plaintiff settlement committee); and *In re MOVEit Customer Data Security Breach Litig.*, MDL No. 3083

(D. Mass.) (currently assisting partner Gary Lynch who was appointed by the court as a Co-Lead Counsel to oversee the settlement committee in an MDL involving over 100 defendants).

17. As demonstrated by Lynch Carpenter's Firm Resume attached as Exhibit A and Joshua Ward's resume attached as Exhibit B, Settlement Class Counsel have extensive experience in class action litigation.

18. I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 5, 2024
In Pittsburgh, Pennsylvania


Patrick D. Donathen

Exhibit A



LYNCH CARPENTER

Pittsburgh ■ San Diego ■ Chicago
Los Angeles

OUR MISSION

Lynch Carpenter is a national law firm with a singular mission – to provide a voice to those who have been silenced by the disproportionate powers which too often exist in America. With lawyers based in Pittsburgh, San Diego, Los Angeles, and Chicago, Lynch Carpenter has created an inclusive national community of like-minded legal talent to represent plaintiffs in complex litigation. Lynch Carpenter lawyers have developed strong collaborative working relationships with counsel throughout the nation and have been involved in numerous high-profile multidistrict litigation proceedings, frequently in leadership roles.

The Lynch Carpenter platform is self-made, without reliance upon the legacy of a long-established “repeat player” law firm and is based upon the fundamental principle that input from a broad base of lawyers with diverse backgrounds, working together with mutual respect, will result in the strongest possible organization. The firm strives to provide equal opportunities for promotion and leadership to its attorneys and supporting professionals. Fourteen of the twenty-three Lynch Carpenter attorneys have been appointed to leadership positions in multidistrict or otherwise consolidated litigation, or in class-action matters involving financial fraud (including securities fraud, derivative actions, and lending fraud), data breach, privacy, consumer fraud, breach of contract, labor and employment, antitrust, and civil rights, in federal and state courts throughout the country.

Lynch Carpenter represents a wide variety of clients, including individual consumers and employees, small businesses, non-profits, issue advocacy groups, and governmental entities. Over the past ten years, Lynch Carpenter lawyers emerged as national leaders in data breach and privacy litigation, and in that time have negotiated or contributed to class recoveries totaling more than \$250 million in that sector alone. Along the way, the Lynch Carpenter team has generated seminal legal authority in both trial and appellate courts. For example, in 2018, as a direct result of Lynch Carpenter’s tenacious appellate advocacy, the Pennsylvania Supreme Court became one of the first state high courts to recognize that a common-law duty of reasonable care applies to the collection and management of sensitive electronically-stored data. This landmark opinion, *Dittman v. UPMC*, 196 A.3d 1036 (Pa. 2018), paved the way for data breach victims to bring viable negligence claims against companies whose inadequate security practices allow major breach incidents to happen.

In October 2020, *The Legal Intelligencer* named Lynch Carpenter (under its predecessor name) “Litigation Department of the Year” for general litigation in Pennsylvania. In 2021, the firm was named as a finalist for Litigation Department of the Year in the Pennsylvania region by *The American Lawyer*. In 2022, the firm was named as a finalist for Privacy/Data Breach firm of the year by *ALM*. In 2023, the firm was named as a Pennsylvania Powerhouse by *Law360*. Several of its partners co-authored updates to *Class Actions: The Law of 50 States*, published by Law Journal Press, from 2021 to 2023. Lynch Carpenter’s attorneys are recipients of numerous additional individual awards, as described in more detail in the individual biographies on the firm’s website.

Lynch Carpenter continues to grow and establish itself as a leader in representing plaintiffs in complex litigation throughout the country. The firm remains committed to developing its younger lawyers and providing them with opportunities for professional growth, both inside and outside of the firm. In leading major complex litigation, the firm draws strength from its decentralized management structure, which fosters collaboration within the firm and enables the assembly of internal litigation teams for each case and epitomizes the synergistic benefits which result from a group of good lawyers working together to do good things.

REPRESENTATIVE AND NOTABLE CASES

PRIVACY & DATA BREACH LITIGATION

In re: MOVEit Customer Data Security Breach Litig., No. 1:23-md-03083 (D. Mass.). In January 2024, Judge Burroughs appointed Gary Lynch as Co-Lead Counsel in this sprawling multi-district litigation action arising from an exploited file-sharing software vulnerability, which led to thousands of data breaches that compromised PII and PHI of nearly 80 million individuals.

Kolstedt v. TMX Finance Corporate Services, Inc., No. 4:23-cv-00076 (S.D. Ga.). In September 2023, Judge Baker appointed Kelly Iverson as Co-Lead Counsel in this consolidated litigation involving a data breach impacting 5 million consumers. The plaintiffs recently filed their consolidated amended complaint.

Miller et al. v. NextGen Healthcare Inc., No. 1:23-cv-02043 (N.D. Ga.). In September 2023, Judge Thrash appointed Gary Lynch to the Plaintiffs' Steering Committee in this consolidated matter related to a data breach at an electronic health record provider which compromised the information of over 1 million patients.

Geleng et al. v. Independent Living Systems, LLC, No. 1:23-cv-21060 (S.D. Fla.). Elizabeth Pollock-Avery was appointed to the Plaintiffs' Executive Committee in this consolidated matter related to a data breach at a healthcare administration and managed care solutions provider, which compromised the PII and PHI of over 4.2 million individuals.

In re Samsung Customer Data Security Breach Litig., MDL No. 3055 (D.N.J.). In March 2023, Judge O'Hearn appointed Kelly Iverson to the Plaintiffs' Executive Committee in this MDL relating to a data breach at Samsung that impacted the PII of millions of the defendant's current and former customers. The defendant's motion to dismiss is currently pending.

In re Wawa, Inc. Data Security Litig., No. 2:19-cv-6019 (E.D. Pa.). Gary Lynch was appointed Co-Lead Counsel for a putative class of financial institution plaintiffs in consolidated actions brought against Wawa, Inc. arising out of a 2019 payment card data breach involving the convenience store's point-of-sale systems. A consolidated amended complaint was filed in July 2020, and in 2021 the district court denied the defendant's motion to dismiss the primary claims. In March 2023, the parties negotiated a proposed settlement that will provide up to \$37 million in relief for the class; a final approval hearing is anticipated in the first quarter of 2024.

In re TikTok, Inc., Consumer Privacy Litig., No. 20-cv-4699 (MDL No. 2948) (N.D. Ill.). Judge Lee appointed Katrina Carroll as Co-lead Counsel in this multidistrict litigation alleging that one of the world's biggest social media platforms captured, collected, and transmitted personal data from TikTok users and their devices without their consent and/or knowledge, including private information and biometric information within the meaning of the Illinois Biometric Information Privacy Act. In August 2022, a settlement for \$92 million received final approval.

In re Equifax, Inc. Customer Data Security Breach Litig., MDL No. 2800 (N.D. Ga.). The Equifax data breach compromised the nation's entire credit reporting system. More than 400 lawsuits filed by consumers and financial institutions were consolidated in the MDL. Gary Lynch was appointed Co-Lead Counsel for financial institution plaintiffs. After significant dispositive motions practice and initial rounds of discovery, the parties negotiated a settlement of the financial institution class action that provides up to \$7.75 million in cash benefits, plus additional injunctive relief. The court granted final approval in October 2020.

In re Blackbaud, Inc. Customer Data Breach Litig., MDL No. 2972 (D.S.C.). In 2020, data security company Blackbaud, Inc. was target for a ransomware attack. In the litigation that followed, brought by Blackbaud's customers, Kelly Iverson was appointed to the Plaintiffs' Steering Committee. On October 19, 2021, the Honorable J. Michelle Childs denied Blackbaud's motion to dismiss Plaintiffs' negligence and gross negligence claims and the plaintiffs' motion for class certification is currently pending.

Popa v. Harriet Carter Gifts, Inc., 52 F.4th 121 (3d Cir. 2022). *Popa v. Harriet Carter Gifts, Inc.*, 52 F.4th 121 (3d Cir. 2022). Lynch Carpenter won reversal of a district court's summary judgment for defendants in a case regarding applicability of Pennsylvania's Wiretapping and Electronic Surveillance Control Act ("WESCA"), 18 PA. CONS. STAT. 5702 *et seq.* The Third Circuit rejected the defendants' attempt to establish a "direct party" exception to WESCA, which would have undermined the two-party consent requirement of the statute. The Third Circuit also confirmed that defendants bear the burden of proving a prior consent defense, and that the location of electronic interception of website communications under WESCA is at the point where software re-routes transmissions from a user's device, not where the website communications are ultimately received. The remanded case remains in litigation in the Western District of Pennsylvania.

In re Marriott International Customer Data Security Breach Litig., MDL No. 2879 (D. Md.). Lynch Carpenter was appointed to the Plaintiffs' Steering Committee in this multidistrict litigation related to the data breach involving Starwood guest information dating back to at least 2014. The MDL includes more than 100 cases and is in pretrial litigation. The district court certified several bellwether classes in May 2022 and the Fourth Circuit granted the defendant's Rule 23(f) appeal. The case is currently on remand from the Fourth Circuit's class certification opinion.

Baker v. ParkMobile, LLC, No. 1:21-cv-02182 (N.D. Ga.). This case involved a data breach of ParkMobile's servers, impacting personal information of 21 million consumers. Nicholas Colella was appointed to the Plaintiffs' Steering Committee. Judge Steve Jones denied ParkMobile's motion to dismiss the negligence, negligence per se, and state consumer protection claims.

Opris v. Sincera Reproductive Medicine, No. 2:21-cv-3072 (E.D. Pa.). Lynch Carpenter served as Co-Lead Counsel in this data breach case involving the 2020 compromise of patients' personal identifiable information and protected health information from a reproductive health services provider. In May 2022, Judge Slomsky denied the majority of the defendant's motion to dismiss. A class settlement received final approval in September 2023 for \$1.2 million.

In re Home Depot Customer Data Breach Litig., 1:14-md-02583, MDL 2583 (N.D. Ga.). In this multidistrict litigation, Lynch Carpenter attorneys represented financial institutions in litigation related to the major data breach at the retailer which continued for almost six months in 2014 and resulted in the compromise of approximately 56 million payment card accounts. Lynch Carpenter was appointed by Judge Thrash to be one of three Lead Counsel managing the financial institution track of the litigation. In September 2017, the Court granted final approval to a comprehensive class settlement that provides over \$27 million in relief to the financial institution class.

First Choice Federal Credit Union v. The Wendy's Company et al., No. 2:16-cv-0506, (W.D. Pa.). This class action arose out of malware installed on the point-of-sale systems of Wendy's franchised restaurants for the purpose of capturing and ex-filtrating customer payment card data. Approximately 18 million payment cards were exposed. The United States District Court for the Western District of Pennsylvania consolidated several proposed class actions and appointed Lynch Carpenter as Co-lead Counsel on behalf of the plaintiff financial institutions.

In November 2018, after three rounds of in- person mediation, Wendy’s agreed to pay \$50 million into a non-reversionary fund and to adopt and/or maintain certain reasonable safeguards to manage its data security risks. When the settlement received final approval in November 2019, the Honorable Maureen P. Kelly noted Class Counsel’s “national reputation,” “significant experience in these types of class actions and in data breach litigation,” and “high level of skill and efficiency.” Judge Kelly further explained:

This case has gone on for three and a half years...This was a very involved case and everyone brought to the table an incredible wealth of knowledge, was always prepared, really was thorough and professional in everything that was provided to the Court. And as involved as this case was, if every case I had was as well organized and professionally presented as this case has been, my life would be much easier... The briefs I got in this case and any filings were just so well-done and detailed. And my law clerks and I have discussed that a number of times. I want to thank counsel for the way you have conducted yourselves and the way you’ve all presented this case.

Dittman et al. v. UPMC d/b/a The University of Pittsburgh Medical Center and UPMC McKeesport, Allegheny Cty., Pa. No. GD-14-003285; 196 A.3d 1036 (Pa. 2018). Lynch Carpenter represented several employees of the health care group UPMC in a class action stemming from a breach of UPMC’s personnel files. On November 21, 2018, the Supreme Court of Pennsylvania issued a landmark decision, reversing two lower courts, regarding the viability of common law negligence claims in the wake of a data breach. The Court found that UPMC engaged in affirmative conduct by collecting and storing employee data, and that general principles of negligence support holding actors to “a duty to others to exercise the care of a reasonable man to protect [others] against an unreasonable risk of harm to them arising out of the act.” As to the economic loss doctrine, the Court agreed with Plaintiffs’ interpretation of Pennsylvania legal precedent on the issue, finding that the question of whether the economic loss doctrine applies necessarily turns on the “source of the duty alleged,” and, accordingly, a plaintiff may seek pecuniary damages under a negligence theory if the duty sought to be enforced arises independently of any contractual relationship between the parties. After remand to the trial court, additional motions practice, and initiating discovery, the parties reached a multimillion-dollar settlement that received final approval in December 2021.

Biscan v. Shields Health Care Group, Inc., No. 1:22-cv-10901-PBS (D. Mass). Judge Saris appointed Elizabeth Pollock-Avery as Interim Co-Lead Counsel, and Hannah Barnett as member of the Interim Executive Committee in this data breach case against a healthcare company involving patients from several states. The defendant’s motion to dismiss is currently pending.

In re: Apple Data Privacy Litig., No. 5:22-cv-07069 (N.D. Cal.). Judge Davila appointed Lynch Carpenter LLP as Co-Lead Counsel in this consolidated litigation alleging that Apple tracks users’ analytics and personal information, even when those users turn off all data sharing settings. The defendant’s motion to dismiss is currently pending.

In re: Zillow Group, Inc. Session Replay Software Litig., No. 2:22-cv-1282 (W.D. Wash.). Gary Lynch serves as Co-Lead Counsel on behalf of visitors to Zillow’s website who allege they were illegally wiretapped by software operating on the page. An amended complaint was filed in April 2023 and the defendant’s motion to dismiss is currently pending.

In re UAAA Data Security Litig., No. 7:21-cv-05813 (S.D.N.Y.). Judge Briccetti appointed Lynch Carpenter as Co-Lead Counsel in this consolidated litigation which alleges that a automobile insurance company violated the Driver’s Privacy Protection Act when it disclosed individuals’ names and driver’s license numbers during a data

breach that compromised the company's online insurance quote platform. The cases is currently in discovery.

In re: BPS Direct, LLC, and Cabelas LLC, Wiretapping Litig., MDL No. 3074 (E.D. Pa.). Judge Kearney appointed Nicholas Colella as Co-Lead Counsel to represent visitors to basspro.com and cabelas.com who allege they were illegally wiretapped by software operating on the page. The court recently issued an order on the defendants' motion to dismiss and an appeal is anticipated.

In re Anthem, Inc. Customer Data Security Breach Litig., MDL No. 2617 (N.D. Cal.). Lynch Carpenter attorneys represented customers of a national health insurer which experienced a data breach involving the personal information, including social security numbers, of up to an estimated 80 million customers. The case was consolidated and transferred to the Northern District of California in June 2015. Lynch Carpenter attorneys participated in discovery related to Highmark, the Pennsylvania-based member of the Blue Cross Blue Shield Association and a co- defendant in the MDL. The parties reached a settlement valued at \$117 million, which was approved by the Court.

In re Target Corporation Customer Data Breach Litig., MDL No. 2522 (D. Minn.). This multidistrict litigation arose out of the massive data breach that occurred in late 2013. Judge Magnuson appointed Gary Lynch to the five-member Plaintiffs' Executive Committee that managed the litigation on behalf of all Plaintiffs' tracks (consumer, financial institution, and shareholder). A settlement agreement which provided \$10 million to affected individual customers was granted final approval in November 2015. A separate settlement providing approximately \$39 million in relief to plaintiff financial institutions was granted final approval in May 2016.

Greater Chautauqua Federal Credit Union et al. v. Kmart Corporation et al., No. 15-cv- 02228 (N.D. Ill.). In this consolidated data breach case in which financial institutions were seeking recovery for losses sustained as a result of a 2014 data breach at one of the nation's largest discount retail chains, Judge Lee appointed Gary Lynch to the Plaintiffs' Executive Committee, and Katrina Carroll to serve as Liaison Counsel. A settlement was reached and approved in June 2017.

In re Ashley Madison Customer Data Security Breach Litig., MDL No. 2669 (E.D. Mo.). In this well-publicized data breach case Lynch Carpenter attorneys represented individuals whose highly sensitive account information was leaked from a social media company. The case was consolidated and transferred to the Eastern District of Missouri in December 2015. Judge Ross appointed Gary Lynch and Katrina Carroll (while with her prior firm) to the Executive Committee. A class settlement for \$11.2 million was given final approval in November 2017.

In re Vizio, Inc. Consumer Privacy Litig., MDL No. 2693 (C.D. Cal.). This action was filed on behalf of individuals who purchased Vizio "Smart TVs," which contained software that collected information about the users in a manner that allegedly violates numerous consumer protection statutes. The case was consolidated and transferred to the Central District of California in April 2016, and Lynch Carpenter was appointed to the Plaintiffs' Steering Committee. The case was settled and received final approval in 2019, providing for a \$17 million common fund.

Veridian Credit Union v. Eddie Bauer LLC, No. 2:17-cv-356 (W.D. Wash.). Lynch Carpenter served as Co-Lead Counsel on behalf of a class of financial institutions in this class action against Eddie Bauer arising out of payment card data breach of the retailer's point-of-sale systems in 2016, which led to the exposure of up to 1.4 million payment cards. After overcoming a motion to dismiss and engaging in substantial discovery, the parties negotiated a class action settlement, which was approved in 2019. The agreement made up to \$2.8 million available in direct cash relief to class members and provided for an additional \$7 million worth of injunctive relief and other

benefits.

In re: Solara Medical Supplies Data Breach Litig., No. 19-cv-02284 (S.D. Cal.). In January 2020, Judge Marilyn Huff appointed Kelly Iverson to the Plaintiffs' Steering Committee in this data breach action that affected both the personally identifiable information as well as protected health information of Plaintiffs' and the classes. In September 2022, a class settlement of \$5.06 million received final approval.

In re Community Health Systems, Inc., Customer Data Security Breach Litig., MDL No. 2595 (N.D. Ala.). Gary Lynch served as a member of the Plaintiffs' Steering Committee in consolidated multidistrict litigation stemming from a 2014 data breach involving one of the nation's largest hospital chains. The breach affected over 200 hospitals and the sensitive personal information of approximately 4.5 million patients was compromised. The action settled on a class basis for up to \$3.1 million.

In re Arby's Restaurant Group, No. 1:17-mi-55555 (N.D. Ga.). In October 2016, computer hackers accessed Arby's inadequately protected point-of-sale system and installed malware that infected nearly 1,000 Arby's restaurant locations. Gary Lynch was appointed by Judge Totenberg as Chair of the Financial Institution Plaintiffs' Executive Committee. The case settled and received final approval in November 2020.

Vance v. International Business Machines Corp., No. 1:20-cv-577 (N.D. Ill.). Lynch Carpenter attorneys were appointed Co-lead Counsel in this class action claiming IBM violated Illinois's Biometric Information Privacy Act when it collected, obtained, disclosed, redisclosed, disseminated, and otherwise profited from Illinois residents' unique facial geometric measurements without providing notice or obtaining consent. In September 2020, Lynch Carpenter defeated nearly all of the arguments raised in IBM's motion to dismiss. The parties resolved the action in 2023.

In re: Clearview AI, Inc., Consumer Privacy Litig., No. 1:21-cv-00135 (N.D. Ill.). Lynch Carpenter attorneys served as counsel in this multidistrict litigation on behalf of a proposed class of Illinois citizens alleging that Clearview, in violation of the Illinois Biometric Information Privacy Act, scraped over 3 billion facial images from the internet, scanned their biometrics, and built a searchable database allowing users to instantly identify an unknown individual with only a photograph. Clearview then gave access to these biometrics to hundreds of law enforcement agencies, private entities, and individuals.

Lewert v. PF Chang's China Bistro, Inc., No. 1:14-cv-04787 (N.D. Ill.): Katrina Carroll served as court-appointed Co-Lead Counsel representing P.F. Chang's customers who had their personal financial information compromised in a 2014 security breach. This matter was one of the first data breach cases on record. Ms. Carroll oversaw all of the appellate briefing in ultimately obtaining a landmark ruling in the Seventh Circuit on Article III standing, hailed by Law360 as one of the "top privacy cases" of 2016.

Salam v. Lifewatch, Inc., No. 1:13-cv-09305 (N.D. Ill.): In this hard-fought litigation, Lynch Carpenter partner Katrina Carroll is currently involved as court-appointed Co-lead Counsel on behalf of a certified class in this privacy matter brought under the Telephone Consumer Protection Act ("TCPA"). Ms. Carroll has been directly involved in all aspects of litigation, including discovery and motion practice which culminated in a total victory for plaintiffs in contested class certification.

CONSUMER PROTECTION/PRODUCTS LIABILITY

In re Philips Recalled CPAP, Bi-Level PAP, and Mechanical Ventilator Products Liability Litig., MDL No. 3014 (W.D. Pa.). In February 2022, Kelly Iverson was appointed as one of four Co-Lead Counsel from a pool of 75 applicants. The MDL includes over 300 actions involving allegations regarding the potentially harmful degradation of sound abatement foam on recalled continuous positive airway pressure (CPAP) machines and the manufacturers' conduct in marketing and ultimate recall of the machines. The parties negotiated a proposed \$479 million resolution of the economic loss claims in the case, which is currently in the preliminary approval phase. The personal injury and medical monitoring claims are in active litigation.

In re East Palestine Train Derailment, No. 4:23-cv-00242 (N.D. Ohio). The court appoint Kelly K. Iverson to the Plaintiffs' Steering Committee in this consolidated action arising from the derailment of a Norfolk Southern train and subsequent release of toxic chemicals in East Palestine, Ohio.

In re Robinhood Outage Litig., No. 20-cv-1626 (N.D. Cal.). In July 2020, Jamisen Etzel was appointed to the Executive Committee overseeing consolidated actions brought by consumers who sustained losses when the trading application Robinhood suffered severe service outages during a period of intense market volatility. A class settlement received final approval in July 2023 for \$9.9 million.

Morrow v. Ann Inc., No. 16-cv-3340 (S.D.N.Y.). Lynch Carpenter attorneys were Co-Class Counsel in a case alleging deceptive pricing practices by a major national retail chain. After plaintiffs overcame a motion to dismiss, the case settled for \$6.1 million worth of class benefits. The settlement was approved in April 2018.

Luca v. Wyndham Hotel Group, LLC, No. 2:16-cv-746 (W.D. Pa.). Lynch Carpenter attorneys were Co-Lead Counsel in a class action against the Wyndham hotel companies for violations of New Jersey consumer protection statutes. Plaintiffs alleged that Wyndham's websites deceptively masked the resort fees charged at certain hotels and forced patrons to agree to illegal terms and conditions. In 2017, plaintiffs defeated a motion to dismiss filed by two of the primary operating subsidiaries. A class settlement worth up to \$7.6 million was reached in 2019 and approved later that year.

Van v. LLR, Inc., 3:18-cv-0197 (D. Ak.); 962 F.3d 1160 (9th Cir. 2020). Lynch Carpenter partners Jamisen Etzel and Kelly Iverson won a significant consumer rights ruling from the United States Court of Appeals for the Ninth Circuit. The appeals court reversed a district court dismissal for lack of standing, and, in a published decision, held that the temporary loss of money is a sufficient "injury-in-fact" under Article III of the Constitution to confer standing on a consumer to file a federal lawsuit. This case is currently pending.

Mednick v. Precor, Inc., No. 14-cv-03624 (N.D. Ill.): Lynch Carpenter partner Katrina Carroll served as court-appointed Co-lead Counsel in this products liability matter concerning the heart rate monitoring feature on Precor fitness machines. Due to Ms. Carroll's efforts, the plaintiffs defeated a contested class certification motion and obtained class certification for a multi-state consumer class. Ms. Carroll was instrumental in negotiating a class settlement providing meaningful relief for class members, for which the Court issued final approval in 2019.

In re Rust-Oleum Restore Marketing, Sales Practices and Prods. Liab. Litig., No. 1:15-cv- 1364 (N.D. Ill.): In this sprawling products liability MDL relating to defective deck resurfacing products, Katrina Carroll was instrumental in negotiating a \$9.3 million settlement providing meaningful relief to consumers, which received final approval in March of 2017 by the Honorable Amy J. St. Eve of the United States District Court for the Northern District of Illinois, now a sitting Judge of the Court of Appeals for the Seventh Circuit.

FINANCIAL FRAUD, LENDING PRACTICES, AND SECURITIES

In re: FedLoan Student Loan Servicing Litig., MDL No. 2833 (E.D. Pa.). Lynch Carpenter serves as court-appointed Co-Lead Counsel on behalf of student loan borrowers and federal grant recipients in this multidistrict litigation. The claims relate to widespread and systemic failures on the part of a student loan servicer and the U.S. Department of Education to adequately service the programs and advise its participant. A consolidated complaint was filed in November 2019. A motion to dismiss is fully briefed and currently awaiting resolution by the Court.

CitiMortgage SCRA Litig., (S.D.N.Y.). Lynch Carpenter attorneys were Tri-Lead Counsel in this class action against CitiMortgage on behalf of Sergeant Jorge Rodriguez in the Southern District of New York. This case alleges that CitiMortgage improperly foreclosed upon Mr. Rodriguez's home (and the homes of similarly situated individuals) while he was serving in Iraq, in violation of the Servicemembers Civil Relief Act. The case settled and received final approval in October 2015, securing \$38.2 million for members of our military service.

In re Community Bank of Northern Virginia and Guaranty National Bank of Tallahassee Secondary Mortgage Loan Litig., (W.D. Pa./3d Cir.). Lynch Carpenter attorneys were Co-Lead Class Counsel in this national litigation on behalf of second mortgage borrowers under the Real Estate Settlement Procedures Act. The class was certified by the district court and affirmed by the Third Circuit, 795 F.3d 380 (2015). A class settlement was finalized in early 2017 and obtained a total recovery of \$24 million.

In re Tenet Healthcare Corp. Securities Litig., No. 02-cv-8462 (C.D. Cal.). Prior to joining the firm, Katrina Carroll represented the State of New Jersey's Division of Investment in this securities class action against Tenet Healthcare and its outside auditor, KPMG, related to false and misleading public statements those entities made between 2000 and 2002 about Tenet's financial health. Katrina played a large role in drafting motions *in limine* briefing issues regarding the admissibility of plaintiff's expert witness report. Tenet settled in 2006 for \$215 million, and KPMG settled in 2008 for \$65 million.

In re Motorola Securities Litig., No. 03-cv-287 (N.D. Ill.). Katrina Carroll represented the State of New Jersey's Division of Investment in this securities class action against Motorola, stemming from misrepresentations made by the company regarding a \$2 billion loan it made to a Turkish entity that was not repaid. The case settled a few days before trial for \$190 million.

Figueroa v. Capital One, No. 18-cv-692 (S.D. Cal.). Todd Carpenter and Eddie Kim served as Class Counsel in a class action challenging the unlawful assessment of multiple ATM fees in contravention of the customer account agreement, which resulted in a \$13 million settlement.

Bingham v. Acorns Grow, 30-2019-0150842 (Cal. Sup. Ct. Orange Cnty.). Eddie Kim served as Class Counsel in a class action on behalf of customers of a financial mobile app that automatically transferred "spare change" from each purchase using debit cards issued by customers' banks into an Acorns Grow investment account. This action challenged the app's failure to prevent overdrafts of customers' checking accounts as a result of the automated transfers and the resultant assessment of overdraft fees. A \$2.5 million settlement received final approval in September 2022.

Schertzer v. Bank of America, No. 19-cv-264 (S.D. Cal.). Lynch Carpenter attorneys represent bank customers who were assessed out-of-network ATM fees for balance inquiries transpiring from deceptive ATM prompts utilized by independent ATM operators Cardtronics and FCTI. Plaintiffs prevailed on challenges to the pleadings. An appeal is currently pending in the 9th Circuit regarding class certification.

COVID-19 CLOSURES LITIGATION

Hickey v. Univ. of Pittsburgh, 8 F.4th 301 (3d Cir. 2023). Gary Lynch argued in front of the Third Circuit after motions to dismiss were granted in favor of the University of Pittsburgh and Temple University. The District Courts held that students could not bring a breach of implied contract under Pennsylvania law, and must point to specific promises in writing. The Third Circuit reversed and remanded, adopting Mr. Lynch's argument that nothing in Pennsylvania case law suggests implied contract claims brought by students are barred, but rather, can be inferred based on course of conduct and marketing material received by the students that tout the benefits of campus. The Third Circuit also reversed the District Courts' dismissal of unjust enrichment in the alternative. The cases are currently pending in district courts.

Espejo et al. v. Cornell Univ., Case No. 3:20-cv-00467 (N.D.N.Y.). Lynch Carpenter represented students of Cornell University who paid for in-person learning, but received remote online only education and services for half of the Spring 2020 semester following the Covid-19 pandemic. The parties reached a settlement of \$3 million for the class. Final approval is pending.

Carpey v. Board of Regents of the Univ. of Colorado, No.: 2020cv31409 (Colo. Dist. Ct., Denver Cnty.). Lynch Carpenter represented students of the University of Colorado who paid for in-person learning, but received remote online only education and services for half of the Spring 2020 semester following the Covid-19 pandemic. The parties reached a settlement of \$5 million for the class, which received final approval in July 2023.

Figueroa v. Point Park Univ., No. 2:20-cv-01484 (W.D. Pa.). Lynch Carpenter represented students of Point Park University who paid for in-person learning, but received remote online only education and services for half of the Spring 2020 semester following the Covid-19 pandemic. After overcoming a motion to dismiss on breach of implied contract and unjust enrichment, the parties reached a settlement of \$1.25 million for the class, which received final approval in December 2023.

Smith v. Univ. of Pennsylvania, No. 2:20c-cv-2086 (E.D. Pa.). Lynch Carpenter was appointed co-lead counsel to represent students who paid for in-person learning, but received remote online only education and services for half of the Spring 2020 semester following the Covid-19 pandemic. Plaintiffs prevailed on a motion to dismiss as to the fees paid for the semester. The parties reached a settlement of \$4.5 million for the class, which received final approval in January 2023.

Kincheloe v. Univ. of Chicago, No. 1:20-cv-03015 (N.D. Ill.). Lynch Carpenter represented students who paid for in-person learning, but received remote online only education and services for half of the Spring 2020 semester following the Covid-19 pandemic. The parties reached a settlement of \$4.95 million for the class, which received preliminary approval in December 2023.

WAGE AND HOUR & EMPLOYMENT DISCRIMINATION LITIGATION

Genesis Healthcare v. Symczyk, No. 11-1059 (U.S. Supreme Court). Gary Lynch served as Counsel of Record before the United States Supreme Court in an appeal addressing the application of mootness principles in a putative collective action filed under Section 216(b) of the Fair Labor Standards Act. When defendant served the plaintiff with a Rule 68 offer of judgment for "make whole" relief, the district court dismissed the case as moot. Gary Lynch successfully argued the appeal in the United States Court of Appeals for the Third Circuit, which held that the FLSA collective action did not become moot upon the plaintiff's receipt of a Rule 68 offer of judgment for full satisfaction of her individual claim. The Supreme Court reversed in a 5-4 opinion, with Justice Kagan writing a

strong dissent on behalf of our client—a position which was subsequently adopted by the majority of the Court in *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153 (2016). Plaintiff’s position before the Supreme Court was supported by the United States as Amicus Curiae.

Verma v. 3001 Castor Inc., No. 2:13-cv-03034 (E.D. Pa.). As Co-Class Counsel, Lynch Carpenter attorneys won a \$4.59 million jury verdict in 2018 for misclassified workers at a Philadelphia nightclub. The claims were brought under the FLSA and Pennsylvania Minimum Wage Act. The trial verdict was fully affirmed by the Third Circuit in August 2019.

Copley v. Evolution Well Services, LLC, No. 2:20-cv-01442 (W.D. Pa.). In February 2022, Lynch Carpenter obtained collective certification under the FLSA of several hundred “hitch employees.” These employees spent hours per week travelling to remote job sites, time for which they were unpaid. On February 10, 2023, Judge Wiegand preliminarily approved a \$2.55 million dollar settlement for the FLSA collective, as well as Pennsylvania and Ohio state classes.

Wintjen v. Denny’s, Inc. et al., No. 2:19-cv-00069 (W.D. Pa). On November 18, 2021, Judge Wiegand of the Western District of Pennsylvania granted class and conditional certification and appointed Lynch Carpenter LLP as Class Counsel. The class encompasses all tipped employees within the Commonwealth of Pennsylvania and involves Denny’s failure to comply with the tip credit notification requirements as well as the 80/20 rule regarding sidework.

ANTITRUST

In re Railway Industry Employee No-Poach Antitrust Litig., MDL No. 2850 (W.D. Pa.), Chief Judge Joy Flowers Conti appointed Lynch Carpenter partner Kelly K. Iverson as Plaintiffs’ Liaison Counsel on behalf of the class of employees who alleged the defendants and their co-conspirators entered into unlawful agreements to reduce and eliminate competition among them for employees and to suppress the compensation of those employees. The two defendants agreed to class settlements worth a combined \$48.95 million, and final approval was granted in August 2020.

In re Blue Cross Blue Shield Antitrust Litig., MDL No. 2406 (N.D. Ala.). Lynch Carpenter attorneys represent healthcare subscriber plaintiffs in four states in this nationwide class action challenging the anti-competitive practices of Blue Cross/Blue Shield’s nationwide network of local insurers who do not compete with each other based on geographic boundaries. A \$2.7 billion settlement received preliminary approval in early 2021.

CIVIL RIGHTS

ADA (Americans with Disabilities Act) Accessibility Litigation. Lynch Carpenter is currently counsel for plaintiffs in a substantial number of putative class actions filed on behalf of individuals with disabilities to enforce the ADA’s accessibility requirements. Over the last ten years, Lynch Carpenter attorneys have represented individuals with visual and mobility disabilities in seeking improved access to physical locations, ATMs, Point of Sale devices, and websites.

LYNCH CARPENTER

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Practice Emphasis

Data Breach
Class Actions
Multidistrict Litigation
Consumer Protection
Financial Fraud
Employment Law

Education

University of Pittsburgh
School of Law, J.D., 1989

Editor, University of
Pittsburgh Law Review,
1988-1989

The Pennsylvania State
University, B.S., 1986

Northwestern University
School of Professional
Studies, Certificate in
Mediation Skills Training,
2018

Gary Lynch prosecutes class and complex litigation on behalf of plaintiffs and has extensive experience in data breach and privacy litigation, consumer protection, and employment law. Courts have consistently appointed Gary to leadership positions in high profile class actions and coordinated proceedings, including, most recently, as Co-Lead Counsel representing consumers nationwide in *In re: Zillow Group, Inc. Session Replay Software Litigation*. Gary has previously been appointed as Co-Lead Counsel representing plaintiffs in numerous large consolidated/MDL class actions, such as, for example: *In re MOVEit Customer Data Security Breach Litigation*; *In re Equifax, Inc. Customer Data Security Breach Litigation*; *First Choice Federal Credit Union v. The Wendy's Company*; *In re: The Home Depot, Inc. Customer Data Security Breach Litigation*; *In re: Wawa, Inc. Data Security Litigation*; and *In re: FedLoan Student Loan Servicing Litigation*. Additionally, Gary has been appointed as a member of the Plaintiffs' Steering Committee representing consumer plaintiffs in *In re Marriott International Customer Data Security Breach Litigation*, as well as numerous other cases, as set forth in his firm's resume, and on the firm's website: LynchCarpenter.com.

In 2018, Gary successfully argued before the Pennsylvania Supreme Court in *Dittman et al. v. UPMC*, where the Court issued its landmark decision recognizing that companies owe a general duty of care to protect against data breaches and clarifying the parameters of the economic loss doctrine in the data breach context, as well as any other context where an independent legal duty is sought to be enforced for purely economic damages. In 2012, Gary served as Counsel of Record before the United States Supreme Court in the case of *Genesis HealthCare Corp. v. Symczyk*, addressing the issue of whether Rule 68 of the Federal Rules of Civil Procedure can be used to moot a Fair Labor Standards Act ("FLSA") collective action. In addition to the foregoing cases before the United States and Pennsylvania highest courts, Gary has successfully argued many federal appeals, often-times addressing significant issues of first impression, including in *Popa v. Harriet Carter Gifts, Inc.*, 52 F.4th 121 (3d Cir. 2022) (recognizing cause of action under Pennsylvania's wiretap law for third-party's recording of website visitor's browsing activity) and *Hickey v. Univ. of Pittsburgh*, No. 21-2013, 2023 WL 5159578 (3d Cir. Aug. 11, 2023) (recognizing implied contract claim by students against universities in the wake of the Covid-19 campus shutdowns).

Admissions

Pennsylvania, 1989
New York, 2018

U.S. Supreme Court, 2012

First Circuit, 2012

Second Circuit, 2015

Third Circuit, 1994

Fourth Circuit, 2017

Fifth Circuit, 2013

Sixth Circuit, 2011

Seventh Circuit, 2010

Ninth Circuit, 2007

Tenth Circuit, 2022

Eleventh Circuit, 2002

W.D. Pa., 1989

M.D. Pa., 2006

E.D. Pa., 2007

N.D. Oh., 2000

S.D. Oh., 2006

C.D. Ill., 2010

N.D. Ill., 2010

E.D. Mich., 2010

D. Md., 2011

W.D.N.Y., 2011

W.D. Mich., 2013

E.D. Wisc., 2016

E.D. Mo., 2016

D. Colo., 2017

S.D.N.Y., 2020

N.D.N.Y., 2020

For more information, visit:

www.lynchcarpenter.com

and www.garylynchlaw.com.

In addition to his appellate advocacy and successful leadership of multi-district and consolidated litigation, Gary also has experience in taking class actions to trial. In 2018, in *Verma v. 3001 Castor Inc.* (E.D. Pa.), Gary served as co-lead trial counsel and obtained a \$4.59 million jury verdict on behalf of a class of misclassified workers at a Philadelphia nightclub for claims under the FLSA and Pennsylvania Minimum Wage Act in a trial over which Senior Judge Anita B. Brody presided.

In 2019, Gary was selected by *The Legal Intelligencer* as a finalist for its Attorney of the Year award.

In 2020, Gary's firm was selected by *The Legal Intelligencer* as the Litigation Department of the Year. In 2021, the firm was named as a finalist for Litigation Department of the Year in the Pennsylvania region by *The American Lawyer*. In 2022, the firm was named as a finalist for Privacy/Data Breach firm of the year by *ALM*. In 2023, the firm was named as a Pennsylvania Powerhouse by *Law360*. Gary, along with two of his partners, also co-authored the current edition of *Class Actions: The Law of 50 States*, published by Law Journal Press.

With over thirty-four years of experience, Gary has developed a distinguished reputation with his peers and the judiciary for his ability to work efficiently and cooperatively with co-counsel, and professionally with opposing counsel in class action litigation. To this end, during a 2019 Fairness Hearing in a data breach case, Hon. Maureen P. Kelly of the Western District of Pennsylvania recognized:

And as involved as this case was, if every case I had was as well-organized and professionally presented as this case has been, my life would be much easier... The briefs I got in this case and any filings were just so well-done and detailed. And my law clerks and I have discussed that a number of times. So, I want to thank counsel for the way you have conducted yourselves and the way you've all presented this case.

And, also, the Court notes that both class counsel for the plaintiffs, as well as counsel for the defendants, have very significant experience in these types of class actions and in data breach litigation. On adequacy, class counsel's well-qualified and, clearly, adequate to represent the plaintiffs.

Hon. Maureen P. Kelly, *First Choice Federal Credit Union v. The Wendy's Company*, (W.D. Pa. Nov. 6, 2019).

Awards & Honors

- Attorney of the Year Finalist, *The Legal Intelligencer*, 2019
- *Super Lawyer*® for Class Action and Mass Torts, 2014 – Present

- *AV Preeminent®* Peer Review Rated by Martindale-Hubbell
- U.S. District Court for the W.D. Pa., *Local Rules Advisory Committee Member*
- Fellow of the College of Labor & Employment Lawyers, 2021
- Fellow of the American Bar Foundation, 2022

Representative Speaking Engagements

- **Co-Presenter (w/ Jamisen Etzel of Lynch Carpenter):** Pennsylvania Bar Institute (“PBI”), Employment Law Institute West (November 2019 – Pittsburgh). Topic: Cybersecurity of Employee Data, including discussion of the Pennsylvania Supreme Court’s opinion in *Dittman v. UPMC* and its effect on employers’ duty to safeguard employee data.
- **Panelist:** Harris Martin’s Equifax Data Breach Litigation Conference (November 2017 – Atlanta). Topic: Counseling financial institutions and other businesses in the wake of the Equifax breach.
- **Panelist:** Current Development and Strategies for Confronting Cyber and Data Security Risks in 2017: ABA Annual Meeting Section of Labor and Employment Law (August 2017 – New York). Topic: The theories of liability and damages in data breach litigation.
- **Panelist:** PBI’s Advanced Cyber Security Law (June 2016 – Pittsburgh). Topic: The composition of plaintiff classes in data breach litigation, as well as the theories of liability and defenses, including the economic loss doctrine and challenges to Article III standing.
- **Panelist:** New Jersey Association for Justice – Boardwalk Seminar (April 2015 – Atlantic City). Topic: Data breach and cybersecurity.
- **Panelist:** PBI’s Cybersecurity Law (August 2014 – Pittsburgh). Topic: The Target data breach and its impact on breach litigation generally.

Representative Experience

Co-Lead Counsel, *In re MOVEit Customer Data Security Breach Litigation*, No. 1:23-md-3083 (D. Mass.) – Gary serves as Co-Lead Counsel in this MDL related to an array of data breaches that involved a file-sharing software vulnerability and impacted thousands of organizations and tens of millions of victims.

Co-Lead Counsel, *In re: Zillow Group, Inc. Session Replay Software Litig.*, No. 2:22-cv-1282 (W.D. Wash.) – Gary serves as Co-Lead Counsel on behalf of visitors to Zillow’s website who allege they were illegally wiretapped by software operating on the page. An amended complaint was filed in April 2023.

Co-Lead Counsel, *Dusterhoft v. OneTouchPoint, Inc.*, No. 2:22-cv-00882 (E.D. Wis.) – Gary serves as Co-Lead Counsel in this consolidated matter related to a data breach that compromised the PII and PHI of over 2.5 million individuals. A consolidated amended complaint was filed in

November 2022.

Co-Lead Counsel, *In re: Wawa, Inc. Data Security Litig.*, No. 2:19-cv-06019-GEKP (E.D. Pa.) – The Court appointed Gary Co-Lead Counsel in a group of consolidated cases brought by financial institutions against the Wawa convenience store chain. In March 2023, the parties negotiated a proposed settlement that will provide up to \$37 million in relief for the class; a final approval hearing is anticipated in the first quarter of 2024.

Co-Lead Counsel, *In re Equifax, Inc. Customer Data Security Breach Litig.*, MDL No. 2800 (N.D. Ga.) – In February 2018, in a heavily contested leadership fight, Chief United States District Judge Thomas W. Thrash, Jr. appointed Gary to co-lead a leadership structure consisting of Co-Lead Counsel, an eight-member steering committee, and co-liaison counsel in multidistrict litigation involving the largest data breach in history.

Co-Lead Counsel, *First Choice Federal Credit Union v. The Wendy's Company et al.*, No. 2:16-cv-0506 (W.D. Pa.) – The Court appointed Gary Co-Lead Counsel in a group of consolidated cases brought by financial institutions against the Wendy's fast-food chain in the aftermath of a late 2015 data breach that exposed customers' credit card information. Magistrate Judge Maureen P. Kelly recommended the denial of Wendy's motion to dismiss in February 2017, and District Judge Nora Barry Fischer adopted that report and recommendation in March 2017. The case ultimately settled for \$50 million, and received final approval in 2019.

Co-Lead Counsel, *In re: The Home Depot, Inc. Customer Data Security Breach Litig.*, MDL No. 2583 (N.D. Ga.) – Gary served as Co-Lead Counsel in this landmark data breach case, which found that retailers have a duty to not “turn a blind eye to the ever-increasing risk of cyberattacks.” In September 2017, the Court granted final approval to a comprehensive settlement that provided over \$27 million in relief to the class.

Lead Counsel, *Dittman et al. v. UPMC d/b/a The University of Pittsburgh Medical Center and UPMC McKeesport*, GD-14-003285 (Allegheny Cty., Pa.). Gary represented employees in a class action stemming from a breach of UPMC's personnel files. Hundreds of employee files were compromised, and fraudulent tax returns were filed using the stolen data. On November 21, 2018, the Pennsylvania Supreme Court found that employers have a duty to exercise reasonable care to safeguard employees' sensitive data and that employees can bring claims for negligence when their employer's internet-accessible computer systems are breached. After remand to the trial court, additional motions practice, and initiating discovery, the parties reached a multimillion-dollar settlement that received final approval in December 2021.

Co-Lead Counsel, *In re FedLoan Student Loan Servicing Litig.*, MDL No. 2833 (E.D. Pa.). Judge Jones appointed Gary Co-Lead Counsel in this multidistrict litigation related to the country's largest student loan servicer's mismanagement of student loan accounts.

Co-Class Counsel/Trial Counsel, *Verma v. 3001 Castor Inc.*, No. 2:13-cv-03034 (E.D. Pa.) – In 2018, Gary, as co-lead trial counsel, received a \$4.59

million jury verdict over which Senior Judge Anita B. Brody presided. Gary represented a class of misclassified workers at a Philadelphia nightclub for claims under the FLSA and Pennsylvania Minimum Wage Act. The Third Circuit affirmed the verdict in full after a post-judgment appeal.

Lead Executive Committee, *Haag v. Janney Montgomery Scott*, No. 2:06-cv-05634 (E.D. Pa.) – Gary served as a member of the Plaintiffs’ Executive Committee, which led the litigation, in this wage and hour class action alleging that the defendant, a stock brokerage company, violated federal and state overtime laws.

Lead Counsel, *Crozer-Keystone Health System Overtime Litig.*, (E.D. Pa.) – Gary filed a collective action in the Eastern District of Pennsylvania challenging pay practices related to nurse practitioners and/or physicians’ assistants. After discovery, the parties filed cross motions for summary judgment. In a widely reported opinion, 760 F. Supp. 2d 513, Senior District Judge Eduardo C. Robreno granted the plaintiff’s motion for summary judgment, holding that the defendant misclassified individuals in plaintiff’s job position. Gary led efforts to resolve the matter after summary judgement, and Judge Robreno approved a settlement in August 2012.

Lead Counsel, *Kahrer v. Ameriquest Mortgage Co.*, No. 2:05-cv-00391/No. 1:06-cv-03586 (W.D. Pa./MDL N.D. Ill.) – Gary filed this action to challenge how courts determine consumer standing under RESPA and how damages under the statute are calculated. In a seminal decision, 418 F. Supp. 2d 748, Gary successfully argued that prior courts had misinterpreted RESPA’s legislative history to dismiss claims under the statute. Multiple federal courts of appeal have adopted the *Kahrer* reasoning, including at least the Third and Sixth Circuits.

Counsel of Record, *Genesis HealthCare Corp. v. Symczyk*, No. 11-1059 (U.S.) – Gary represented the plaintiff and served as Counsel of Record in *Genesis Healthcare Corp. v. Symczyk*, 133 S.Ct. 1523 (2013). Although the five-justice majority ruled for the defendant, Justice Kagan’s influential dissent in *Genesis* laid the foundation for the Court’s subsequent decision in *Campbell-Ewald Co. v. Gomez*, 136 S.Ct. 663 (2016), which held that an unaccepted offer of judgment does not moot a plaintiff’s claims. *See Campbell-Ewald*, 136 S.Ct. at 669–72.

Chair of Plaintiffs’ Executive Committee, *Doe v. Highmark, Inc.*, No. 2:23-cv-00250 (W.D. Pa.) – Gary serves as chair of the Plaintiffs’ Executive Committee in this consolidated matter related to a data breach at a health insurance provider that compromised the PII and PHI of over 200,000 individuals. The parties are currently awaiting a decision by the Court on the defendant’s motion to dismiss.

Plaintiffs’ Executive Committee, *Greater Chautauqua Federal Credit Union et al. v. Kmart Corporation et al.*, No. 15-cv-02228 (N.D. Ill.). Gary served on the Plaintiffs’ Executive Committee in a consolidated case in which financial institutions sought recovery for losses sustained as a result of a 2014 data breach. A settlement was approved in 2017.

Plaintiffs' Executive Committee, *In re Ashley Madison Customer Data Security Breach Litig.*, MDL No. 2669 (E.D. Mo.) – Gary was appointed to serve on the Plaintiffs' Executive Committee to represent individuals whose highly sensitive account information was leaked. A class settlement for \$11.2 million was given final approval in November 2017.

Plaintiffs' Executive Committee, *In re Target Corporation Customer Data Breach Litig.*, MDL No. 2522 (D. Minn.). Gary served on the Plaintiffs' Executive Committee in this MDL related to the massive data breach that occurred in late 2013. The Court granted final approval of settlement agreements that provided \$10 million to affected individual customers and approximately \$39 million to financial institutions.

Plaintiffs' Steering Committee, *In re: Overby-Seawell Company Customer Data Security Breach Litig.*, No. 1:23-md-03056 (N.D. Ga.) – The Court appointed Gary to the Plaintiffs' Steering Committee in this multidistrict litigation related to a data breach involving a vendor for various lenders, including KeyBank. A motion to dismiss is pending.

Plaintiffs' Steering Committee, *In re Intellihartx Data Security Incident Litig.*, No. 3:23-cv-1224 (N.D. Ohio) – The Court appointed Gary to the Plaintiffs' Steering Committee in this consolidated matter related to a data breach at a revenue cycle management company which compromised the PII and PHI over approximately 490,000 individuals.

Plaintiffs' Steering Committee, *Miller et al. v. NextGen Healthcare Inc.*, Case No. 1:23-cv-02043 (N.D. Ga.) – The Court appointed Gary to the Plaintiffs' Steering Committee in this consolidated matter related to a data breach at an EHR provider that compromised PII of over 1 million patients.

Plaintiffs' Steering Committee, *In re Marriott International Customer Data Security Breach Litig.*, MDL No. 2879 (D. Md.). The Court appointed Gary to the Plaintiffs' Steering Committee in this multidistrict litigation related to the data breach involving Starwood guest information. The MDL includes more than 100 cases and is in pretrial litigation.

Plaintiffs' Steering Committee, *In re Community Health Systems, Inc., Customer Data Security Breach Litig.*, MDL No. 2595 (N.D. Ala.). Gary served on the Plaintiffs' Steering Committee in this multidistrict litigation concerning a 2014 data breach involving one of the nation's largest hospital chains. The breach affected over 200 hospitals and compromised the sensitive information of approximately 4.5 million patients. The action settled on a class basis for up to \$3.1 million.

Chair of Plaintiffs' Leadership Committee, *Ellis v. Edward D. Jones & Co., L.P.* (N.D. Ohio) – Gary chaired the Plaintiffs' Leadership Committee in this wage and hour class action alleging that the defendant, a stock brokerage company, violated federal and state overtime laws. Following protracted discovery and multiple rounds of mediation, the parties reached a class settlement in which class members from multiple states received more than \$19 million.

Exhibit B



JOSHUA WARD – PRESIDENT AND MANAGING PARTNER



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Education

Duquesne University
School of Law, J.D.
2014

University of
Pittsburgh, B.A.,
American History,
2011
magna cum laude

Court Admissions

Pennsylvania, 2015
W.D. Pa., 2018
M.D. Pa., 2019

Joshua is the founding member and managing partner of J.P. Ward & Associates, LLC. The firm was formed for the purpose of representing consumers against creditors and debt buyers that are known to be non-compliant with the Pennsylvania law. As part of the practice Joshua has represented hundreds of clients in prosecuting violations of the Fair Debt Collection Practices Act (“FDCPA”), Fair Credit Extension Uniformity Act and the Unfair Trade Practices and Consumer Protection Law (“FCEUA/UTPCPL”), the Loan Interest Protection Law and the Consumer Discount Company Act (LIPL/CDCA”), the Telephone Consumer Protection Act (“TCPA”), the Fair Credit Reporting Act (“FCRA”), as well as the Home Improvement Consumer Protection Act (“HICPA”).

Joshua is jointly prosecuting the instant proposed class action lawsuits in The Court of Common Pleas of Allegheny County, involving the owners/operators of private property within the city of Pittsburgh, which have hired certain towing companies to engage in thousands of illegal trespass-tows and are known to have charged excessive fees to consumers.

Joshua has represented thousands of consumers in the defense of debt collection actions. As part of the defense of those cases, he has developed an auditing process to screen all consumer lending transactions for various violations of law which are known to exist in Pennsylvania. He has dedicated hundreds, if not over one thousand, hours to designing operational workflows to protect consumers.

Joshua is owner and manager of operations of J.P. Ward & Associates, LLC, which has physical offices in Pittsburgh and Philadelphia. J. P. Ward & Associates, LLC is currently comprised of eleven non-attorney, and four attorney staff members.

Joshua is personally responsible for managing and prosecuting a current case load which exceeds five-hundred fifty (450) active consumer violation files and has personally resolved over two-hundred ninety (290) consumer violation cases to date. The bulk of Joshua’s cases involve consumer finance, although, a significant minority of cases involve a myriad of business practices including home improvement contractors, diamond dealers, auto sales, property rentals, equipment sales, and various other consumer transactions.

Joshua is also lead counsel and head of operations for the consumer debt defense practice, which has resolved over three thousand cases to date. Joshua has designed the workflows for intake and processing of legal pleadings, notices, and court documents, and assigning tasks to non-attorney and attorney staff members. Joshua remains solely responsible for overseeing each individual case and managing all staff members involved in that practice. In 2019, the debt defense practice enrolled over one thousand and one hundred (1,100) new cases and included every magisterial district court and court of common pleas in Pennsylvania.

Joshua is lead counsel and head of operations for the personal injury, general litigation practice and employment law, which has resolved over five-hundred cases, and has an active case load of over eight hundred.

Joshua has been interviewed several times by local affiliates of major news networks in relation to consumer protection issues and class action lawsuits. He has been featured in an article of the Washington Post and Law 360 regarding the instant cases involving predatory towing.

Prior to forming the practice in 2015, Joshua worked with multiple law firms in Pittsburgh, including Cohen and Grigsby, P.C., and Edgar Snyder and Associates. Joshua has experience in class action, personal injury, medical malpractice, premises liability, products liability, contract law, debt collection and minority shareholder disputes. Joshua has served as lead counsel in all consumer violation cases, designed operational work flows necessary to service hundreds of cases, crafted releases to suit the needs of his practice and processed all settlements personally.

Education, Memberships, Honors and Court Admissions

Joshua graduated *magna cum laude* from the University of Pittsburgh, Main Campus, with a BA in American History. Joshua earned his Juris Doctorate at Duquesne University School of Law. While attending law school Joshua received the following honors and awards. Joshua was Champion and received the highest individual award as First Place Advocate for Excellence in Trial Advocacy, by The Academy for Trial Lawyers of Allegheny County, 2014. He was a member of the Duquesne National Trial Team, participated in the Buffalo-Niagara Mock Trial Competition, and the Gourley Cup, 2013 and 2014. Joshua received the Shalom Moot Court Award, 2014. He was invited to write on the Duquesne Law Review in 2012, an honor only awarded to the top 15% of the law school classes. He also received awards for Outstanding Brief and Oral Argument, Duquesne Legal Research and Writing Center, 2012. In 2014, Joshua was inducted into The Order of Barristers, which includes those nationally recognized for outstanding performance in regional, national and international interscholastic moot court competitions.

As an attorney, Joshua has been a member of the National Association of Consumer Advocates since 2016, an organization dedicated to the representation of consumers that have been victimized by fraudulent, abusive and predatory business practices.

Joshua is admitted to practice before The Supreme Court of Pennsylvania, The United States District Court for the Western District of Pennsylvania, and The United States District Court for the Middle District of Pennsylvania.