

Fisher Broyles

Name: Barry Goheen

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Practice Areas: Commercial Litigation; Cyber-Risk, Privacy & Data Security; Litigation — Civil Pretrial and Trial Services; TCPA Practice Group

Bar Admissions: Georgia; Tennessee

Education: Vanderbilt 1989, B.A.; Vanderbilt 1994, J.D.

Experience: King & Spalding

Barry Goheen has practiced for 25 years, focusing on consumer class actions; credit-related, financial products and services; data breach and privacy litigation; and complex litigation.

CLASS ACTIONS

Mr. Goheen has served as lead or co-counsel in over 50 class actions in all areas of the law, including antitrust, financial products and services, securities fraud, consumer protection, privacy/data breach, product liability and general commercial disputes in state and federal courts representing such clients as The Coca-Cola Company, SunTrust Banks, Priority Payment Systems, Post Properties, Equifax, GreenSky, Aaron's, Chico's, SCANA, Humana, Bank of America, Brown & Williamson Tobacco Corporation, Jefferson-Pilot Life Insurance Company, 3M, Wal-Mart, and Lockheed Martin Corporation. His class action matters include

- Participation in several phases of a multi-phase trial of a product liability class action in Miami, Florida.
 - Lead counsel in the defense of a proposed nationwide RICO class action brought against automobile manufacturer alleging misrepresentation of horsepower in the vehicles.
 - Lead counsel in over 20 class actions against consumer reporting agency alleging violations of Fair Credit Reporting Act, including entering trial of FCRA class action in 2010 in federal court in Pennsylvania, settling case on favorable terms for client after opening statements.
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- Lead or co-counsel in defense of over 40 proposed class actions brought by consumers of cigarette products, obtaining dismissal or denial of class certification in all but two cases.
- Lead counsel in data breach class action arising from laptop theft exposing information of voters.

Representative Cases

- Consumer Privacy/Data Breach: *Singletery v. Equifax Info. Servs., LLC*, 540 Fed. Appx. 939 (11th Cir. 2013) (affirming summary judgment and denial of class certification); *Soutter v. Equifax Info. Servs., LLC*, 498 Fed. Appx. 260 (4th Cir. 2012) (reversing class certification); *Carvalho v. Equifax Info. Servs., LLC*, 629 F.3d 876 (9th Cir. 2010), aff'g 588 F. Supp. 2d 1089 (N.D. Cal. 2008) (summary judgment in proposed class action); *Perrill v. Equifax Info. Servs.*, 205 F. Supp. 3d 869 (W.D. Tex. 2016) (granting motion to dismiss class complaint); 2016); *Jackson v. Equifax Info. Servs.*, No. 13-cv-2382 (N.D. Ga. Sept. 11, 2015) (granting summary judgment in proposed nationwide class action); *Williams v. Citi Mortgage, Inc.*, 2014 WL 1406601 (W.D. Okla. Apr. 10, 2014) (granting motion to dismiss class allegations); *Parker v. Midland Credit Mgmt., Inc.*, 874 F. Supp. 2d 1353 (M.D. Fla. 2012) (granting motion to dismiss class complaint); *Chakejian v. Equifax Info. Services, LLC*, 275 F.R.D. 201 (E.D. Pa. 2011) (approving class settlement); *Throckmorton v. Metro. Gov't of Nashville and Davidson Co.*, No. 08C43 (Davidson Co., TN, Cir. Ct. 2008) (dismissing data breach class action complaint); *Gardner v. Equifax Info. Services*, 2007 WL 2261688 (D. Minn. Aug. 6, 2007) (denying class certification).
- FACTA: *Kirchein v. Pet Supermarket, Inc.*, 297 F. Supp. 3d 1354 (S.D. Fla. 2018) (dismissing FACTA class action due to lack of standing); *Reed v. Golf & Tennis Pro Shop, Inc.*, No. 14-885 (D.N.J. April 1, 2015) (approving FACTA class settlement); *Kopelow v. Shell Oil Co.*, No. 8:08-cv-1040 (M.D. Fla. June 30, 2008) (dismissing proposed FACTA class action).
- Commercial Privacy: *Peters v. Equifax Consumer Svcs.*, 597 Fed. Appx. 408 (9th Cir. 2015).
- TCPA: *Garrett v. SCANA Mktg., Inc.*, No. 1:15-cv-03881 (N.D. Ga. May 12, 2017) (individual settlement of proposed TCPA class action); *Wreyford v. Citizens for Transportation Mobility, Inc.*, No. 1:12-cv-02524 (N.D. Ga. Oct. 16, 2014) (approving TCPA class settlement).
- Background/Employee Screening: *Hayes v. Aaron's, Inc.*, No. 15-2090 (E.D. La. Jan. 6, 2016) (dismissing proposed background screening class action); *Antoine v. Aaron's, Inc.*, No. 1:14-cv-02120 (N.D. Ga. Mar. 2, 2015) (dismissing proposed background screening class action).
- Other Consumer Class Actions: *Anderson v. R.J. Reynolds Tobacco Co.*, 112 Fed. Appx. 491 (6th Cir. 2004) (affirming dismissal of class action complaint); *Perry v. American Tobacco Co.*, 324 F.3d 845 (6th Cir. 2003) (affirming dismissal of class action complaint); *Terlizzi v. Altitude*

Mktg., Inc., No. 1:16-cv-01712 (D. Colo. May 14, 2018) (granting motion to compel individual arbitration in proposed class action); Alfortish v. GreenSky, LLC, 2017 WL 699830 (E.D. La. Feb. 22, 2017) (granting motion to compel individual arbitration in proposed class action); Jones v. Bank of America Corp., 2013 WL 6198206 (M.D. Ga. Nov. 27, 2013) (granting motion to dismiss class complaint); Parker v. Midland Credit Mgmt., Inc., 874 F. Supp. 2d 1353 (M.D. Fla. 2012) (granting motion to dismiss class complaint); Schulte v. Fifth Third Bank, 2011 WL 3269340 (N.D. Ill. July 29, 2011) (approving class settlement); Rollins, Inc. v. Warren, 653 S.E.2d 794 (Ga. App. 2007) (decertifying class); Parker v. Brush Wellman, Inc., 377 F. Supp. 2d 1290 (N.D. Ga. 2005) (granting motion to dismiss class complaint); In re Motorsports Antitrust Litigation, 112 F. Supp. 2d 1329 (N.D. Ga. 2000) (approving class settlement); Insolia v. Philip Morris Inc., 186 F.R.D. 535 (W.D. Wis. 1998) (denying class certification).

TRIALS

In addition to the class trial identified above, Mr. Goheen has extensive trial experience in business litigation matters arising in varied areas of the law.

- Lead counsel in jury trial in case brought under Fair Credit Reporting Act, obtaining defense verdict (affirmed on appeal) in case where plaintiff sought \$25 million.
- Lead counsel in the two-week bench trial of a RICO case asserted against one of the firm's clients in federal court in Louisiana.
- Lead counsel in the defense of a franchisor-franchisee dispute in the Southern District of Georgia, in which the jury returned a defense verdict that was affirmed by the Eleventh Circuit Court of Appeals.
- Co-counsel for plaintiffs in fraud and civil RICO case that obtained \$6 million verdict against defendants, with damages tripled to \$18 million.

Representative Cases

- Morris v. Equifax Info. Services LLC, 289 Fed. Appx. 708 (5th Cir. 2008) (affirming defense verdict); Maiz v. Virani, 253 F.3d 641 (11th Cir. 2001) (affirming jury's RICO verdict); Coffee v. General Motors Acc. Corp., 30 F. Supp. 2d 1376 (S.D. Ga. 1998) (granting partial summary judgment), 218 F.3d 746 (table) (11th Cir. 2000) (affirming defense verdict).
- Okocha v. Trans Union LLC, 488 Fed. Appx. 535 (2d Cir. 2012) (affirming summary judgment); Aclys Intern. v. Equifax, 438 Fed. Appx. 689 (10th Cir. 2011) (affirming dismissal); Ex parte King,

59 So. 3d 21 (Ala. 2010) (granting writ of mandamus); Intera Corp. v. Henderson, 428 F.3d 605 (6th Cir. 2005) (affirming dismissal of complaint); Versa Products, Inc. v. Home Depot, USA, Inc., 387 F.3d 1325 (11th Cir. 2004) (dismissing plaintiffs' appeal); Priority Payment Sys., LLC v. SignaPay Ltd., 161 F. Supp. 3d 1294 (N.D. Ga. 2016) (granting preliminary injunction in trade secret case); Novartis Animal Health US, Inc. v. Earle Palmer Brown, LLC, 424 F. Supp. 2d 1358 (N.D. Ga. 2006) (granting summary judgment), aff'd, 2007 WL 906446 (11th Cir. 2007); PepsiCo, Inc. v. Coca-Cola Company, 114 F. Supp. 2d 243 (S.D.N.Y. 2000) (granting summary judgment), aff'd, 315 F.3d 101 (2d Cir. 2002).

OTHER REPRESENTATIVE LITIGATION

Mr. Goheen has experience litigating a broad array of business and commercial matters for such clients as The Coca-Cola Company, Priority Payment Systems, Trustmark National Bank, Sprint Corporation, Xerox Corporation, GMAC, Home Depot, Equifax, and Royal Oak Enterprises, Inc. including

- *Assisted in defense of antitrust action brought by competitor of soft drinks manufacturer, obtaining summary judgment.
- Lead counsel in defense of civil RICO action in case brought account debtor against factor, obtaining summary judgment.
- Lead counsel in defense of trade secrets case brought by majority shareholders of company against minority shareholders.
- Lead counsel in antitrust and unfair competition case brought by telecommunications provider.

SELECTED PRESENTATIONS/PANELS/PUBLICATIONS SINCE 2011

- Author, "Disproportionate or Bankrupting Liability in FCRA Class Actions Remains an Uncertain Class Certification Issue," Consumer Fin. Services Law Report, Vol. 14, Iss. 24 (1/19/11);
- Co-Author, "The Credit Card Accountability and Disclosure Act of 2009 and Other Recent Lead Developments Affecting Consumer Class Actions in the Financial Services Industry," Journal of Taxation and Regulation of Financial Institutions, Vol. 25, No. 1 (Sept./Oct. 2011);
- Panelist, "Consumer Finance Class Actions: FCRA and FACTA," Strafford, March 2012;
- Panelist, "Data Breaches – Coming to a Network Near You," Chartis, Houston, Texas, October 2011;

- Speaker, “FACTA and the Dodd Frank Act,” The Knowledge Congress, November 2012; * Panelist, Cybersecurity Law & Policy In-House Summit, Global Law Forum, Washington, D.C., January 2014;
- Co-Author, “Target and Neiman Marcus face government probes and litigation as a result of holiday-season cyberattacks,” [lexology.com](#), February 3, 2014;
- Speaker, “Class Action Efforts Based on Data Thefts and Security Breaches,” State Bar of Georgia, Atlanta, Georgia, September 2014;
- Author, “Standing to sue for risk of identity theft based on the compromise of personal identifying information,” [Financier Worldwide](#), December 2014;
- Quoted, “Target’s data breach liabilities mount as credit card issuers’ suit proceeds,” [businessinsurance.com](#), January 4, 2015;
- Author, “Target data breach class actions withstand dismissal,” [financierworldwide.com](#), Expert Briefing, March 2015;
- Quoted, “Justices Should Weigh in on Standing Issue in Breach Class Action, Former Judge Says,” [Bloomberg/BNA Class Action Litigation Report](#), 4/25/15 (16 CLASS 464);
- Author, “Expert Q&A on Standing in Data Breach Class Actions,” [Practical Law](#), April/May 2015;
- Quoted, “Why So Many Data Breach Lawsuits Fail” [bankinfosecurity.com](#), May 11, 2015;
- Quoted, “Target, MasterCard settlement not a sure thing” [businessinsurance.com](#), May 12, 2015;
- Author, “Supreme Court Prepares to Weigh FCRA and ‘Actual Injury,’” [Corporate Counsel](#), [corporatecounsel.com](#), June 23, 2015;
- Author, “Supreme Court to decide whether Congress may confer standing on consumers to sue for statutory violations in the absence of actual harm,” [financierworldwide.com](#), Expert Briefing, July 2015;
- Speaker, “Standing and the Requirement of Injury in Class Actions,” State Bar of Georgia, Atlanta, Georgia, September 2015;
- Speaker, “Increased FCRA Background Check Litigation - How Employers Reduce Risk in 2016,” The Knowledge Congress, December 2015;
- Panelist, “FCRA Class Actions in Employment on the Rise: Avoiding and Defending Claims,” [Strafford](#), January 2016;
- Speaker, 24th National Conference on Consumer Finance Class Actions & Litigation, American Conference Institute, January 2016;
- Co-Author, “Cybersecurity Considerations for Real Estate Investment Firms,” [PREA Quarterly](#), Spring 2016;

- Speaker, "Ascertainability: Rule 23's Latest Battleground," State Bar of Georgia, Atlanta, Georgia, September 2016;
- Co-Author, "Challenges Ahead For Banks Pursuing Data Breach Claims," Law360, October 13, 2016;
- Quoted, "Yahoo Breach Combined Class Suit May Grow to 1.5 B Accounts," Bloomberg BNA Class Action Litigation Report, December 15, 2016;
- Co-Author, "Perspectives: Recent District Court Decision Creates Higher Standard for Financial Institutions Pursuing Data Breach Claims," Corporate Disputes, January-March 2017;
- Quoted, "Unredacted Card Receipt Allegations Cost Microsoft \$1.2M," Bloomberg BNA Class Action Litigation Report, March 10, 2017;
- Speaker, "Spokeo One Year Later," State Bar of Georgia, Atlanta, Georgia, September 2017;
- Co-Chair, Cambridge Forum on Defense Class Action Litigation, Dana Point, California, October 2017, October 2018.

TEACHING

Adjunct Professor, Emory School of Law, 2011-2019, Advanced Pretrial Litigation and Class Actions.

RECOGNITION

Member of the Vanderbilt Law Review, Executive Associate Justice of the Vanderbilt Moot Court Board, and recognized in the 1993-94 edition of Who's Who in American Law Students

AMICUS BRIEFS

Atlanta Apartment Association amicus brief before Georgia Court of Appeals (December 2018)