

# Jenner & Block Wins Interlocutory Appeal for Marriott International

## News

August 17, 2023

Jenner & Block secured an appellate win on August 17 in the US Court of Appeals for the 4<sup>th</sup> Circuit for client Marriott International regarding its interlocutory appeal of class certification in multidistrict litigation over a data security incident. The appellate court vacated class certification and ruled that the district court erred in not considering the applicability of a waiver at the certification stage.

"We agree with Marriott that the time to address a contractual class waiver is before, not after, a class is certified," Judge Harris wrote for the appellate panel. "Although it seems no court has had occasion to expressly hold as much, that is the consensus practice. Courts consistently resolve the import of class waivers at the certification stage – before they certify a class, and usually as the first order of business."

Partner Matt Hellman argued the case in the Fourth Circuit and said, "This important decision makes clear that courts cannot certify first and assess the validity of a class action waiver later."

Partner Lindsay Harrison added, "This is especially significant in the context of data security suits, where individual consumers frequently have suffered no injury and the impetus for the suit is more about securing attorneys' fees than redressing any actual harm."

In addition to Matt and Lindsay, the Jenner & Block team includes Partner Michelle Kallen; Associates Leslie Bruce, Elizabeth Deutsch, Mary Marshall, and Ray Simmons; and former Partner Zach Schauf and former Associate Kevin Kennedy. Senior Paralegal Cheryl Olson and Manager of Docketing Services Tyler Edwards provided key paralegal and docketing support, and Practice Assistant Beth Gulden provided key administrative support.

## Related Attorneys



**Matthew S. Hellman**

Partner

[mhellman@jenner.com](mailto:mhellman@jenner.com)

+1 202 639 6861



**Lindsay Harrison**

Managing Partner, Washington, DC

[lharrison@jenner.com](mailto:lharrison@jenner.com)

+1 202 639 6865

**Elizabeth B. Deutsch**

Partner

[edeutsch@jenner.com](mailto:edeutsch@jenner.com)

+1 202 639 6031

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