VLP Partner Michael Whitener Quoted in Financial Times Article, "Court rulings threaten to upset defences against data breach claims"

VLP Partner Michael Whitener was recently quoted in the *Financial Times* article, "Court rulings threaten to upset defences against data breach claims."

The article reported that the rise of data breaches and other types of cyber-crimes could increase the risks of companies facing individual consumer litigation and class action law suits. The article also noted that, although sometimes it can be difficult to show the damage caused by a data security breach until much later, lawyers have still found ways to bring suits against companies whose data have been breached. They might claim, for example, that consumers have been forced to spend money on credit monitoring services.

Mr. Whitener said, "Because of the prevalence of data breaches and the desire of courts not to leave individuals without remedy when their data have been compromised, we'll be seeing courts getting more creative about how they define what an actual injury or a pending injury might be."

In some cases, courts may not dismiss a case immediately but allow the plaintiffs to attempt to prove they have suffered. However, these cases tend not to lead to court decisions. Mr. Whitener noted, "You get into discovery [the pre-trial process during which the parties obtain evidence such as sworn statements and other documents] and lots of costs for both parties. That's where defendants are ready to settle rather than proceed."

Recent decisions from a number of high-profile cases are likely to make it easier for consumers to bring suits against companies in the event of a data breach or cyber intrusion. Mr. Whitener added that it is not always easy for companies to know how to best prepare for cyber incursions as the threat is evolving all the time. "It's an arms race with the hackers to stay one step ahead of them. That's a moving target."

To read the full *Financial Times* article quoting Mr. Whitener, click here.