



# An Overview Of Hinshaw's Cyber Insurance, Cybersecurity, And Data Privacy Practice

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Hinshaw is one of the most accomplished and well-respected insurance services law firms in the United States. As such, we are uniquely positioned to advise and represent insurers and their policyholders in connection with cyber and privacy-related claims matters. We regulatory represent insurers in connection with coverage claims and coverage litigation. We also are experienced in representing policyholder in a wide-range of cyber and privacy litigation.

We help our clients – including insurers and their policyholders – in managing cyber and privacy-related risks and in addressing security and privacy breaches. In addition to coverage and response after the fact, we proactively assist clients in planning for and reducing the risk of privacy and cyber security incidents. Our attorneys work with clients to identify and anticipate risks and obligations, design and implement customized plans, policies, and best practices and to create and implement data incident response procedures. We also work hand in hand with clients to assess and establish safeguards around the use of data.

Our cyber insurance, regulatory, and response teams are comprised of knowledgeable attorneys experienced in the constellation of exposures attendant to cyber and privacy risks, including professional liability and risk management, litigation, and class action defense. We draw upon our world class team of legal professionals – and vendors – to respond to the particular insurer or policyholder and the matter at issue.

## Cyber Insurance Coverage And Monitoring For Insurers

Hinshaw is one of the leading firms representing insurers in evaluating, litigating, and resolving insurance coverage disputes. Our expertise extends to the full range of coverages, including so-called silent coverage under traditional policies, specialty policies, and cyber, data, and privacy specific coverages.

Our extensive experience and wide range of services to insurers with respect to cyber insurance and reinsurance extend to:

- ◆ Evaluation and resolution of claims under cyber policies, informed by deep understanding of cyber policy wordings and cyber/privacy laws and regulations.
- ◆ Evaluation and resolution of cyber, technology, and privacy-related claims under traditional insurance policies, including property, general liability, crime, and employment practices policies as well as the various forms of cyber coverages.
- ◆ Assistance with drafting policy language and product development.
- ◆ Representing insurers in coverage, bad faith, and market conduct litigation before trial courts, appellate courts, and arbitration panels across the country.
- ◆ Serving as monitoring counsel for cyber and privacy claims under cyber and traditional policies.
- ◆ Evaluation of claims under facultative and treaty reinsurance contracts and representation in reinsurance arbitration and litigation.

## Defending Policyholders In Cyber Data Privacy Litigation

Hinshaw's nationally recognized litigation specialists and trial lawyers have provided high level litigation services to our clients for over 85 years. Our teams have successfully litigated and resolved hundreds of

consumer law cases and numerous multi-district national class actions concerning a variety of high stakes privacy exposures including the Illinois Biometric Privacy Act (BIPA) and the Telephone Consumer Protection Act (TCPA), as well as the Fair Debt Collection Practices Act (FDCPA), the Illinois Collection Agency Act (ICAA), Unfair, Deceptive or Abusive Acts or Practices (UDAAP), and other consumer finance laws. Insurers regularly call upon Hinshaw to defend their policyholders in cyber and privacy litigation.

## Incident Response For Policyholders

Despite the employment of best practices, data security and privacy incidents are all too common. The frequency of ransomware, business email compromise, and other events continues to escalate, taking an ever-increasing financial, operational, and reputation toll on today's enterprises. Massive ransom demands, coupled with threats to expose extracted data, has further increased the stakes in 2021, raising the average cost of an attack to \$4.44 million. In addition, new and wide-ranging privacy laws and regulations, some with a private right of action and statutory damages, are making it more difficult for companies to get and stay compliant. The COVID pandemic and the attendant remote workforce has created additional system challenges and cyber vulnerabilities. Groundbreaking laws, like the New York Department of Financial Services Cybersecurity Regulation, the General Data Protection Regulation (GDPR) and the California Consumer Privacy Act (CCPA), provide for substantial fines, even in the absence of a data breach. GDPR fines in mid-2020 exceeded €344 million.

Companies worldwide have learned the hard way that cybersecurity incidents demand an immediate response to stop financial and reputational bleeding, restore public confidence, and minimize the impact of follow-on litigation. We work with companies on rapid and appropriate responses to minimize the disruption and damage associated with a cyber incident. We also act swiftly and collaboratively with the company to stem the damage from cyber incidents. When retained as a breach coach, we work with the client to identify legal obligations triggered by the incident and coordinate the response with required service providers, always endeavoring to protect the confidentiality of the post-incident response process.

Our incident response services include:

- ◆ Coordination of initial incident assessments, the securing of networks, and evidence preservation.
- ◆ Coordination of necessary security, forensic, and incident response vendors.
- ◆ Counseling on ethical issues related to data incidents and data breaches.
- ◆ Evaluation of state specific obligations.
- ◆ Coordination of vendors, call centers, and third-party forensic teams.
- ◆ Lead/assistance with public relations or crisis management efforts.
- ◆ Drafting notifications to compromised individuals and government regulators.
- ◆ Counseling on remediation strategies.
- ◆ Defense of litigation/government investigations and development of regulatory responses.
- ◆ Lead or providing guidance for responding to government inquiries and interacting with regulators.

We regularly partner with our affiliate firm in the U.K., RPC, in matters involving cross-border cyber and privacy incidents. Accordingly, insurers and their policyholders turn to Hinshaw for litigation and non-litigation responses to cyber and privacy incidents.

# Cyber And Privacy Risk Management

Hinshaw attorneys advise clients on a wide-range of cyber, privacy, and risk management issues, in understanding and compliance with various laws and statutes, responding to requests of regulators, and representing companies before regulatory bodies. Our services include:

- ◆ Complex regulatory compliance with foreign, federal, and state laws and regulations, including the California Consumer Privacy Act, the newly enacted California Privacy Rights Act and Virginia Consumer Protection Act, Gramm-Leach-Bliley Act, Children's Online Privacy Protection Act, Fair Credit Reporting Act, Computer Fraud and Abuse Act, New York State Department of Financial Services Cybersecurity Regulation, National Association of Insurance Commissioners Model Law and related state statutes, CCPA, GDPR, Privacy Shield, BIPA, HIPPA, TCPA, and many others.
- ◆ Preparation of information security policies and programs, and incident response plans.
- ◆ Proper methods of collecting and monitoring employee personal information, including acceptable-use policies for internet, email, social media and bring-your-own-device plans.
- ◆ Advisory services concerning the collection, use, sale, and sharing of protected consumer information and related contractual issues.
- ◆ Creation of document management and retention policies and third party contract vendor protections and regulatory compliance.
- ◆ Preparation of contracts concerning the use of various technologies, including provisions addressing data security, incident response, and privacy requirements, as well as related indemnity and insurance obligations.
- ◆ Board of directors advisory services.
- ◆ Drafting, evaluating and updating privacy and security policies for:
  - Cloud computing/storage
  - Email and Wi-Fi
  - HIPAA and HITECH
  - Mobile device management and “bring your own device” (BYOD)
  - Network security
  - Physical security
  - Direct to consumer products or services
- ◆ Data destruction and disposal practices.
- ◆ Ethical considerations involving privacy and data security issues.
- ◆ Coordination of vulnerability and penetration testing, assessment of outcomes, and remediation strategies.
- ◆ Information privacy and cybersecurity training for employees, management, and boards.

## Cyber And Privacy Services For Insurance Companies

Over the past several years, insurance companies have been impacted by a variety of cyber and privacy-related regulations and laws, some of which are specifically targeted to the insurance industry. Our team



provides cyber and privacy compliance and best practices advice to help insurers in their capacity as businesses navigate these evolving compliance and operational challenges.

## Hinshaw's Cyber Insurance And Cybersecurity Team

Our team is comprised of accomplished attorneys across the country with backgrounds representing companies before insurance and regulatory bodies and experience in techno-legal issues, digital forensics, cybercrime investigations, government relations, regulatory investigations and hearings, and a broad range of litigation. We have attorneys with experience representing companies in a full range of industries, including data-dependent and highly regulated industries and professional services such as financial services, insurance, and healthcare sectors. Our team includes lawyers from the New York State Department of Financial Services, former assistant U.S. attorneys, former assistant states attorneys general, leading insurance coverage lawyers, and attorneys experienced in representing companies before insurance and regulatory bodies.

To assist in helping clients with the quality of the firm's legal work and service, and oversee the appropriate staffing of matters, clients are assigned a core team leader to ensure satisfaction on specific goals and objectives.

## Cyber And Privacy Thought Leadership

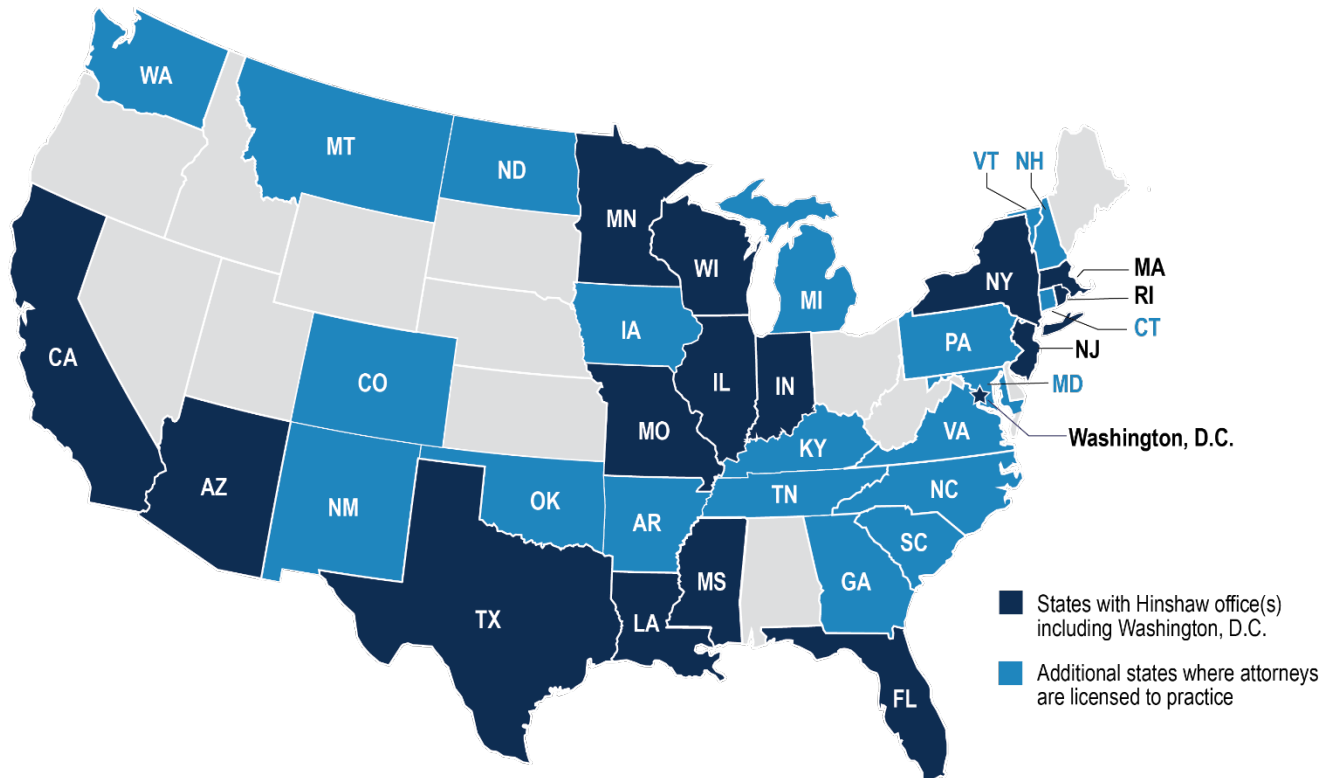
In addition to being outstanding practitioners, Hinshaw lawyers are among the world's leading thought leaders in cyber and privacy law, response, and litigation. Our lawyers frequently speak before a wide-range of leading insurance, legal, tech, and cyber organizations and associations as well as to insurers and trade groups. We also write on a wide-range of cyber and privacy issues. Below are links to some of our publications:

- [Hinshaw Partner Judy Selby Named a 2021 National Law Journal Insurance Law Trailblazer](#), March 4, 2021
- [Newly Issued NYS DFS Cyber Insurance Risk Framework](#), February 10, 2021, *Law360*
- [Commentary in Mealey's Litigation Report: 2020 Cyber And Privacy Coverage – A Year In Review](#), January 27, 2021
- [Privacy Bill Essentials: Washington](#), March 25, 2021, Hinshaw Privacy & Cyber Bytes
- [Utah Becomes the Second U.S. State to Establish Affirmative Defenses for Data Breach](#), March 22, 2021, Hinshaw Privacy & Cyber Bytes
- [Approval of Additional CCPA Opt-Out Regulations](#), March 17, 2021, Hinshaw Privacy & Cyber Bytes
- [Privacy Bill Essentials: A Federal Information Transparency and Personal Data Control Act](#), March 16, 2021, Hinshaw Privacy & Cyber Bytes
- [New York DFS Fines Mortgage Lender \\$1.5M for Failure to Report Cyber Breach](#), March 11, 2021, Hinshaw Privacy & Cyber Bytes
- [New York DFS Issues Report Detailing Findings From Its Investigation of Facebook Data Privacy Practices](#), March 10, 2021, Hinshaw Privacy & Cyber Bytes
- [NYS DFS Publishes its Investigative Report of the Twitter Hack of July 2020](#)
- [Carlos Ortiz Analyzes in ARM Compliance Digest: Returned Phone Call Enough to Confer Standing in TCPA Case](#)
- [Validating Cyber Compliance in Light of the First DFS Enforcement Action](#)

- [Another Cybersecurity Wake Up Call: Connecticut Insurance Department Issues Guidance on Cyber Law Set to go Into Effect](#)
- [Long-Awaited DFS Cyber Enforcement Action Sees Charges Filed Against Title Insurer For Exposing Millions of Documents Containing Consumer Personal Information](#)
- [SCOTUS Decides Federal Debt is not Exempted from TCPA, While FCC Autodialer Declaration Further Alters TCPA Landscape](#)
- [Beyond Data Breach: Evaluating Coverage for Misuse of Information Claims](#)
- [Capital One Loses Bid to Shield Post-Breach Report from Consumer Plaintiffs](#)
- [No Protection for Vendor's Forensic Report in Post-Breach Litigation?](#)
- [TCPA Fax Claim Is Not a Covered Occurrence; Personal and Advertising Injury Coverage Is Also Not Triggered, Rules Pennsylvania Federal Court](#)
- [Appellate Court Rules Insurers Have Duty to Defend Illinois Biometric Privacy Claim](#)
- [Publication is not Publishing: Ninth Circuit Says Insurer Must Defend Privacy Suit](#)
- [Evaluating the Insurability of CCPA Fines Assessed by the California Attorney General](#)
- [Fourth Circuit Holds Privacy Exclusion Bars Coverage for Law Firm's DPPA Claim](#)
- [Computer Fraud and Funds Transfer Fraud Coverages Not Triggered by Social Engineering Phishing Scam](#)
- [Coverage for Phishing Loss Precluded by Voluntary Parting Exclusion; Forgery Coverage Not Triggered](#)
- [Court Rejects Coverage for Phishing Loss Under Financial Institutions Bond, Calls for More Briefing on Computer Systems Fraud Coverage Issue](#)
- [Insurers Take Steps to Reduce Silent Cyber Exposure](#)
- [Confirming a "But-For" Test, Federal Court Rejects "Semantic" Attempt to Narrow Liability Policy's TCPA Exclusion](#)
- [Policyholders Face Substantial Challenges in Obtaining Coverage for Cyber Claims Under First-Party Property Policies](#)
- [What's Keeping Corporate Directors & Officers Up at Night: Accelerating Privacy Regulation](#)
- [Steve Puiszis Authors Comprehensive Overview of EU's GDPR Privacy Law in Journal of the Professional Lawyer](#)

## Our Presence Is Powerful

With offices coast to coast, including in all major financial hubs, Hinshaw has attorneys who understand your challenges and will be available when and where you need them.



## Hinshaw/RPC Alliance

Hinshaw's alliance with Reynolds Porter Chamberlain (RPC) enables us to provide advice and representation extending to the U.K., Asia, Latin America and beyond and to provide innovative solutions for cross-border work. Headquartered in London, RPC has more than 350 lawyers with offices in London, Hong Kong, Bristol, and Singapore. The alliance provides an unmatched level of support for underwriters, claims, and legal teams across the U.S., U.K., and Asia, as well as in Latin America.

## Hinshaw at a Glance

We provide effective legal advocacy and pursue positive results driven by our clients' unique requirements and goals. The quality of our counsel is grounded in our proven depth and experience. Founded nearly a century ago during the Great Depression, we know firsthand what it means to overcome challenges and position a business for long-term success.

Today, we are as forward thinking as ever and remain committed to providing clients of every size — from multinational corporations, privately held companies, and mid-sized businesses to nonprofits — with holistic legal solutions.



## Diversity, Equity & Inclusion: The Fabric of Our Firm

Many say they are committed to diversity. At Hinshaw, we let our actions speak for us.

It starts from the top: our highest governance body, the Management Committee, is 44% diverse. In addition, the firm recently became a signatory to the Mansfield Rule 5.0, intended to boost representation of diverse lawyers in law firm leadership by considering at least 30 percent women lawyers, lawyers of color, LGBTQ+ lawyers and lawyers with disabilities for leadership and governance roles, equity partner promotions, formal client pitch opportunities, and senior lateral positions. Our *Black Attorneys Matter Referendum* also aims to turn the tide in the direction of proactive racial inclusion with concrete action items.

We are proud that many of our women and attorneys of color also serve in a number of high-ranking professional and civic board positions—a reflection of our strong commitment to the communities in which we live and work.

We continue to receive a perfect score of 100% on the Corporate Equality Index (CEI) and be named one of the "Best Places to Work for LGBTQ Equality" (2021) by the Human Rights Campaign Foundation, for the 12th year in a row.

Hinshaw is also committed to the pipeline necessary for advancing diversity, equity and inclusion through our *Hinshaw Diversity Scholarship*. This long-standing program awards two diverse law students with a summer associate position and a financial scholarship. To learn more about our initiatives, visit [hinshawlaw.com/diversity](https://hinshawlaw.com/diversity).

