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## DLA Piper Names New Phila. MP, Head of Litigation

BY GINA PASSARELLA

*Of the Legal Staff*

DLA Piper has elevated two Philadelphia partners into new leadership positions in the wake of the death last month of office leader Carl M. Buchholz.

Litigator Joe Kernan has been named managing partner of the Philadelphia office and partner Nancy Rappaport has been named head of the litigation group in Philadelphia, taking over the position Kernan most recently held.

Buchholz died May 23 after a yearlong battle with cancer. His death, at age 51, took many by surprise as he kept his illness private and worked up to the day he passed away. At the time, DLA Piper said firm leadership hadn't begun to think about who would replace Buchholz in his leadership role.

Kernan takes over an office that Buchholz had grown to 55 lawyers and  
*DLA Piper continues on 10*

## Ban on Class Action Waivers Could Bring Litigation 'Avalanche'

BY BEN SEAL

*Of the Legal Staff*

As the Consumer Financial Protection Bureau takes comments on a proposed rule that would prohibit financial services companies from locking consumers into arbitration, attorneys who handle class actions are preparing for a radically altered future.

Whether the result would be a significant deterrence to corporate wrongdoing or an opening of the floodgates to class action litigation is still unclear, but a drastic shift in the paradigm is likely either way.

Deepak Gupta of Gupta Wessler in Washington, D.C., who has served as appellate counsel in some of the largest consumer class actions in recent years, said the CFPB's proposed rule is "the single most transformative thing the bureau can do to level the playing field for consumers."

The rule, issued last month, would ban the use of predispute arbitration agreements that



KAPLINSKY



DONOVAN

contain a class action waiver, a move that Gupta and other plaintiffs attorneys said would create avenues for consumers to recover for the type of small-scale damages that often go unchecked under the current scheme.

"It's really hard to overstate the importance of this rule," Gupta said.

Alan Kaplinsky, who leads Ballard Spahr's consumer financial services group and testified three times as an industry representative at CFPB hearings on the rule, said the proposed change would leave

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## State AG Kane Fights Claims of Retaliation Brought by Top Agent

BY LIZZY MCLELLAN

*Of the Legal Staff*

Pennsylvania Attorney General Kathleen Kane has filed a motion to dismiss one of two counts in the federal lawsuit filed by a top Office of Attorney General agent, Kevin Wevodau.

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## Rite Aid Can't Sue Ex-Chief Counsel Convicted of Fraud, Judge Rules

BY P.J. D'ANNUNZIO

*Of the Legal Staff*

The former vice chairman and chief counsel of Rite Aid Corp., who spent time in federal prison for fraud, is off the hook in a \$135.6 million suit brought against him by the pharmacy chain because of

a release in a shareholder class action settlement agreement.

U.S. District Judge Stewart Dalzell of the Eastern District of Pennsylvania held in *In re Rite Aid Securities Litigation* that Rite Aid's state court action against former executive Franklin C. Brown for breach

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A transportation services company has asked the U.S. District Court for the Eastern District of Pennsylvania to compel Comcast and T-Mobile to reveal the identity of the internet subscribers who allegedly illegally accessed trade secrets through the company's Google account.

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Lenox Corp., a maker of china, gifts and collectibles, is battling with its former general counsel over the right to examine his computer hard drive in connection with a suit accusing him of taking away confidential information when he left to work for a competitor.

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Very few people realize the ramifications, consequences and freedoms that come with a birth certificate, contributor Angela D. Giampolo writes.

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Philadelphia Diversity Law Group founder Nolan N. Atkinson Jr. is serving in a historic role as Philadelphia's inaugural chief diversity and inclusion officer, contributors Sophia Lee and Stella M. Tsai write.

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# Waivers

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corporate America spending more than ever to resolve disputes with consumers.

“It’s going to mean an avalanche of class actions, an explosion of class actions, which have been relatively tame for the last decade as the result of the use of arbitration and class action waivers,” Kaplinsky said.

Kaplinsky said he pioneered the use of class action waivers in arbitration provisions. Although he was anticipating such a proposal because the CFPB has been working up to it over a period of years, he said he is nonetheless “extremely disappointed.”

The rule, open for comments until Aug. 22, could affect corporate legal work even beyond the introduction of a new group of class actions, he said. Eliminating waivers would make arbitration—and the complex infrastructure required to offer it as an avenue of relief—less enticing to companies, steering all matters to the courts instead, he said.

“If waivers are not permitted, I think most companies will abandon the use of arbitration altogether,” Kaplinsky said.

The proposed rule came after an arbitration study ordered by Congress and published last year, which found that consumers rarely file individual lawsuits or arbitration cases to obtain relief for legal violations. But, to Kaplinsky, class actions aren’t necessarily the answer. Even when they do result in recovery, individual plaintiffs receive little more than \$30, on average, he said.

The purpose of the CFPB’s proposed rule—and its potential benefit to consumers—is to open the door to recovery for individuals with relatively small claims who would otherwise not find an attorney willing to represent them on a contingency-fee basis, nor be able to afford an hourly lawyer, according to Timothy Mathews of Chimicles & Tikellis, who represents plaintiffs in consumer class actions.

An increase in class action litigation is certainly a possibility, he said, but the real

question is whether the CFPB will allow meritorious cases to be heard and wronged consumers to be made whole.

The rule is essential to permit reasonable access to justice in a landscape full of schemes, overcharges and fraud, said Michael Donovan of the Donovan Litigation Group, which handles consumer class actions. More than any potential for increased litigation, he said the rule’s primary impact would be to cause a “drastic reduction” in the size and scope of financial- and web-based programs that unfairly take money from consumers. Prevention and deterrence are as significant as any other aspect of the ban on class action waivers, he said.

Kaplinsky said that because most consumers involved in class actions receive nothing, the rule would do little to benefit them. The streamlined arbitration process would be gone, leaving longer delays in resolving disputes and costing companies under the CFPB’s jurisdiction even more. The benefactors of the proposed rule,

Kaplinsky said, are a relatively small group of individuals.

“Everybody is a loser except plaintiffs class action attorneys,” he said.

Gupta agreed with Donovan that deterrence would be the great achievement of a ban on class action waivers, allowing the harms of defending such cases—discovery and precedent, for example—to convince bad actors to clean up their practices. While any company regulated by the CFPB would be affected, the rule would come down hard on the worst members of the consumer financial marketplace, Gupta said. Payday lenders, debt-consolidation companies and credit-repair services—all of which use arbitration to “shield” their conduct—would quickly find themselves facing increased scrutiny, he said.

“Those practices are not being challenged at all in private enforcement right now,” Gupta said.

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