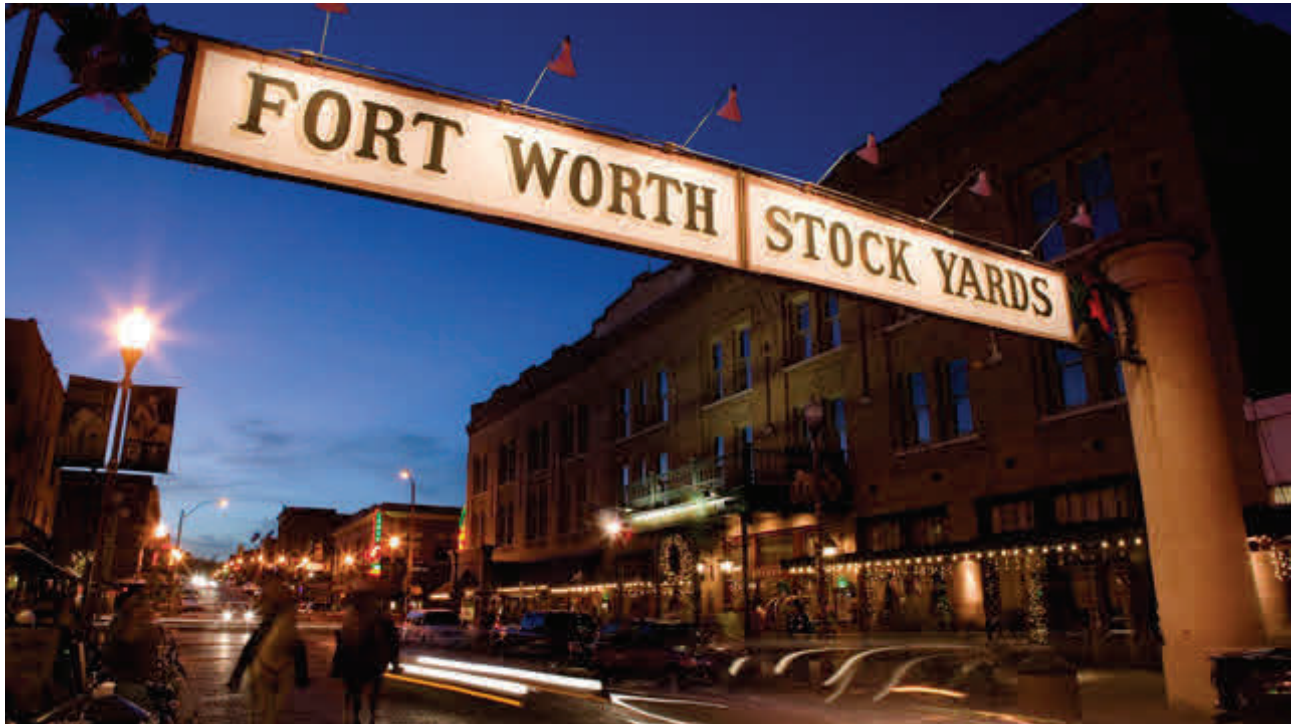




Primerus
The World's Finest Law Firms

ACC Association of
Corporate Counsel
DALLAS-FORT WORTH



2015 Primerus Business Law Institute Symposium

June 11, 2015
Fort Worth Club

Fort Worth, Texas



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WHAT IS THE INTERNATIONAL SOCIETY OF PRIMERUS LAW FIRMS?

The International Society of Primerus Law Firms (Primerus) is a society of top-rated, independent, boutique law firms that have earned the right to display the Primerus seal of quality. When Primerus was created in 1992, we set out to restore honor and dignity to the legal profession and to help rebuild the public's trust in lawyers and the judicial system. In doing so, the Primerus name has become synonymous around the world with high quality legal services for reasonable fees.

Primerus law firms in the U.S. and Canada must be AV-rated using the Martindale-Hubbell peer review service. For firms outside of North America, consideration is given to respected resources, such as, Chambers Global Guide, Legal 500 EMEA, and IFLR 1000. Once approved for membership, Primerus firms are audited annually to ensure they continue to be the "best of the best," year after year. Thus, Primerus does the vetting so you don't have to, and our ongoing quality assurance evaluations mean you can always be confident when hiring a Primerus attorney.

Over the last two decades, Primerus has developed one of the most valuable services available to clients in today's legal market. With a membership of nearly 180 firms in more than 45 countries, we offer clients access to nearly 3,000 of the world's finest attorneys. With thousands of lawyers in the society, Primerus members, collectively, offer the breadth of expertise and jurisdictional coverage that only the world's largest law firms can offer to their clients, but at more reasonable rates.

The most important decision any client must make when resolving a legal problem, or preventing future legal issues, is finding the right lawyer, with the right skills, in the right location, and at the right cost.

Because our law firms are small to mid-sized, clients receive personalized attention, excellent communication, increased responsiveness, and build enduring relationships. Since we go to great lengths to ensure that all Primerus firms provide a great value for clients, you can, with confidence, look to Primerus as a trusted resource for all of your outside legal counsel needs.



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THE PRIMERUS SIX PILLARS

Each Primerus member has earned the right to carry the Primerus seal by committing to uphold our strict standards for quality and professionalism, which we refer to as the Six Pillars:

Integrity

Research shows that integrity is the number-one quality clients want from their lawyers. We believe clients should be able to trust their attorney completely.

Excellent Work Product

Work product is more than winning or losing. It means that all of a lawyer's work for clients is of consistent, high quality. It means that records, as well as communications with clients, are detailed and clear. It means that phone calls are returned, deadlines are met, and promises are kept. There are two ways Primerus ensures quality of members' work product. One is through reputation and strict pre-screening, checking with clients, judges and other local attorneys. The other is by choosing members who specialize in certain areas of law, such as business or family law.

Reasonable Fees

Primerus member firms may work by the hour, on a contingency plan (pay if you win), or on other fee arrangements. But regardless of the structure, the fees must be reasonable, based on what is customary in their geographic area, and on the individual attorney's knowledge and experience. We know clients are looking for value, now more than ever, and Primerus members are here to deliver high-quality legal services for a good value.

Continuing Education

For Primerus members, education doesn't end with a law degree. Primerus attorneys are required to complete an average of 30 hours of CLE (Continuing Legal Education) per year. This is more than twice the typical bar CLE requirement.

Civility

Primerus members still hold the courtroom to be a place of honor. Accordingly, as officers of the court, all lawyers and judges deserve our respect, even when in disagreement. Members may express themselves strongly, but never rudely. Primerus attorneys pledge professionalism, in accordance with the profession's noblest traditions.

Community Service

The law, in its purest sense, is community service. Fundamentally, the law exists to hold communities together. Primerus members pledge themselves to numerous community service endeavors including pro bono services for those who cannot afford legal counsel.



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ABOUT THE PRIMERUS BUSINESS LAW INSTITUTE

The Primerus Business Law Institute (PBLI) brings together top-quality law firms that share common values and a commitment to providing the best service to clients for reasonable fees. With a wide variety of expertise and law firms on every continent, Primerus members have access to the resources that typically only large law firms can provide to their clients. Everything the Institute does is focused on putting those resources to work for clients, while also offering the value businesses today demand.

PBLI member firms work together with clients through strategic relationships with the Association of Corporate Counsel (ACC), as well as various other educational and social opportunities through Primerus.

PBLI member firms are committed to working with clients to meet the challenges businesses face in a global economy.



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2015 Primerus Business Law Institute: Executive Committee

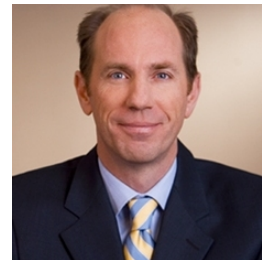
Byron L. Saintsing, Esq. – Chair

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Montgomery Barnett

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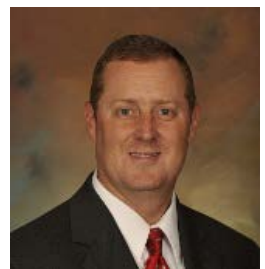
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Lisa Dingman-Nowicki, Esq.

General Counsel

International Society of Primerus Law Firms



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2015 Primerus Business Law Institute Symposium
Fort Worth Club – Fort Worth, Texas
June 11th, 2015

Wednesday, June 10th, 2015

6:00-7:30 p.m. **Cocktail Reception** – Primerus Members and ACC Leadership – Reata Restaurant
(Address: Sundance Square, 310 Houston St., Fort Worth, TX)

Thursday, June 11th, 2015

8:30-9:15 a.m. **Registration/Check In (Top of the Town – 12th Floor)**

9:15-9:30 a.m. **Welcome**

9:30-10:45 a.m. **Challenges of a U.S. Employer at Home and Abroad** – This panel will provide comparative insight into employee privacy laws in the U.S., Mexico and Europe, as well as provide insight and updates into the focus and practice of the EEOC, and give an overview of NLRB decisions which may affect the non-union private employer.

- **Lauren Darden** – **Wharton Aldhizer & Weaver PLC** (Harrisonburg, VA)
- **Robert Gosseen** – **Ganfer & Shore, LLP** (New York, NY)
- **Jennifer Hurley** – **Lockheed Martin Aeronautics Company** (Fort Worth, TX)
- **Francisco Peña** – **Cacheaux, Cavazos & Newton, LLP** (Mexico City, Mexico)

10:45-11:00 a.m. **Break**

11:00-12:15 p.m. **Patent Trolls – Effective Strategies for Avoiding and Interacting with them from the Perspective of In-House Counsel** – During this session, the panel will define the issues with patent trolls, discuss the recently implemented state and federal measures to combat this practice, discuss strategies and tactics for avoiding the lawsuits and minimizing financial and disruption of business costs, and review the risk/reward of “accept no settlement” positions and the effect on future litigation.

- **James Francis** – **Fowler Bell PLLC** (Lexington, KY)
- **Dan Pierron** – **Widerman Malek, P.L.** (Melbourne, FL)
- **Jordan Sigale** – **Dunlap Codding** (Oklahoma City, OK)

12:15-1:30 p.m. **Networking Luncheon**

1:30-2:45 p.m. **Navigating Non-Compete Clauses** – This panel will discuss best practices in drafting and negotiating non-compete clauses in employment contracts. They will discuss enforceability in terms of geographic restrictions, time and scope. Specific examples will be examined and discussed.

- **Shannon Davis** – **James, Potts & Wulfers, Inc.** (Tulsa, OK)
- **William Ferebee** – **O'Donnell, Ferebee & Frazer, P.C.** (Houston, TX)
- **Jason Frazer** – **O'Donnell, Ferebee & Frazer, P.C.** (Houston, TX)



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2:45-3:00 p.m.

Break

3:00-4:00 p.m.

Getting the Most from Outside Counsel – This panel will address how in-house counsel can maximize the value they receive from outside counsel. What should you be communicating to your outside counsel with respect to goals of the engagement, billing guidelines, cyber security concerns, roles and responsibilities, budgets, and risk tolerance?

- **Darryl Horowitz** – **Coleman & Horowitz, LLP** (Fresno, CA)
- **Brian Restivo** – **The Woodmont Company** (Fort Worth, TX)
- **Brian Wagner** – **Mateer & Harbert, P.A.** (Orlando, FL)

4:00-5:15 p.m.

Avoid Being the Next Data Breach Headline: Lessons for In-House Counsel – This panel will focus on the key takeaways for protecting your company from a breach, the measures that should be taken to prepare in the event a breach occurs, and what to do if a breach occurs.

- **Gerry Balboni** – **Krevolin & Horst, LLC** (Atlanta, GA)
- **Debera Hepburn** – **FTS International Services** (Fort Worth, TX)
- **Halsey Knapp** – **Krevolin & Horst, LLC** (Atlanta, GA)
- **Bernie Resser** – **Greenberg Glusker** (Los Angeles, CA)
- **Khizar Sheikh** – **Mandelbaum Salsburg P.C.** (Roseland, NJ)

5:15-5:30 p.m.

Closing Session

5:30-7:00 p.m.

Cocktail Party (Bellevue)

Fort Worth Club Contact Information:

Fort Worth Club

306 West Seventh Street

Fort Worth, Texas 76102

Phone: 817.336.7211



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“Challenges of a U.S. Employer at Home and Abroad”

Thursday, June 11th, 2015 (9:30-10:45 a.m.)

Presented by:

Lauren Darden – Wharton Aldhizer & Weaver PLC (Harrisonburg, VA)

Robert Gosseen – Ganfer & Shore, LLP (New York, NY)

Francisco Peña – Cacheaux, Cavazos & Newton, LLP (Mexico City, Mexico)

Moderated by:

Jennifer Hurley – Lockheed Martin Aeronautics Company (Fort Worth, TX)

PART I - NLRB EMPLOYEE HANDBOOK PITFALLS FOR EMPLOYERS AND DEVELOPMENTS IN PREGNANCY DISCRIMINATION LAW

- I. NLRB GENERAL COUNSEL’S MEMORANDUM CONCERNING WORKPLACE RULES DATED MARCH 18, 2015
 - a. Types of policies addressed
 - i. Confidentiality rules
 - ii. Employee conduct rules
 - iii. Anti-harassment rules
 - iv. Rules for use of company trademarks, logos, copyrights
 - v. Photography/recording rules
 - vi. Media contact rules/Employee interaction with third-parties
 - vii. Conflict of interest rules
 - viii. Restricting employees from leaving work
 - b. Section 8(a) and Section 7 and the “reasonable employee” test
 - c. Putting policies in context and thorny issues for employers
 - d. Potential Implications and Drafting Considerations
- II. DEVELOPMENTS IN PREGNANCY DISCRIMINATION LAW
 - a. The Pregnancy Discrimination Act (PDA) and the two-pronged protection
 - b. The EEOC’s July 2014 interpretation of employer responsibilities under the PDA
 - c. *Young vs. UPS* and the U.S. Supreme Court’s interpretation
 - d. Implications and employer strategy following *Young*

PART II - SIGNIFICANT RECENT NLRB DEVELOPMENTS: NEW STANDARDS FOR DEFERRAL TO ARBITRATION

- I. An Overall View of the Significance of the New Deferral Standards
- II. A brief history of the NLRB case law on deferral standards: *Spielberg, Olin, Alpha Beta, and Babcock & Wilcox*
- III. The NLRB General Counsel’s Deferral Memorandum: GC 15-02
- IV. The new, three-pronged test for deferral



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- V. What the reversed burden of proof means for counsel
- VI. Deferral pending arbitration
- VII. Pre-arbitration settlement agreements
- VIII. Strategies and tactics

PART III – WHAT MULTI-NATIONAL EMPLOYERS NEED TO KNOW AND WHY

- I. Compliance for Multinational Employers under various international privacy laws
 - a. Cross border privacy differences for U.S. vs EU employers:
 - i. Overview of the various differences and similarities
 - b. U.S. Based Employers' Issues Under Europe's New Data Privacy Law
 - i. 7 various data principles and rules in the EU Directive for Employers
 - ii. How employers have to handle "sensitive data" of employees under the EU Directive
 - iii. What recent changes are important for employers under the EU Directive
 - c. What Mexican Privacy Law Means to US Multinational Employers and/or Companies. [Many US companies have subsidiaries or distributors in Mexico, and data concerning Mexican employees, customers, and business contacts is often transferred to the US Company.]
 - i. Primer for compliance of employee personal data for international employers under the Mexican Data Privacy Law
 - ii. Eight principles that U.S. employers need to follow to process personal data of employees in Mexico;
 - a. Privacy notices by employers
 - b. Mexican companies and opt-in consents requirements for transfer of sensitive or personal data of employees
 - c. Exceptions to consent by employees
 - iii. Obligations of the employer to protect the data of their employees
- II. Hot Topics: What NOT to do as a Multinational Company
 - a. The Dangers as an Employer for violating International Privacy Laws: Sanctions and Penalties and Breach
 - b. Employer liability in the EU and the Right to be Forgotten
 - c. Employer liability in Mexico
 - d. U.S.: Home Depot, Target and Sony: What do these companies have in common?



Lauren Darden, Esq.

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Speaker Biography

Biography:

Ms. Darden joined the firm in 2006 after completing a judicial clerk externship with the Honorable Humes J. Franklin, Jr. and the Honorable Thomas H. Wood in the Twenty-Fifth Judicial Circuit Court of Virginia. She is a native of Baltimore, Maryland and has lived in the Shenandoah Valley since 1996 when she began her undergraduate education at James Madison University. Ms. Darden earned a Bachelor of Arts degree from JMU, cum laude, and earned her Juris Doctor degree from the Washington and Lee University School of Law, graduating as a member of the Order of the Coif. Ms. Darden resides in Waynesboro with her husband, Christopher, and their two children. She serves on the Board of Directors of the Waynesboro Family YMCA and the Board of Directors of the Virginia Association of Defense Attorneys.

Ms. Darden enjoys a broad civil litigation practice in the areas of employment law, workers compensation defense, personal injury litigation, property damage litigation and corporate and commercial litigation. She practices in all areas of insurance law, including insurance defense, policy coverage, and subrogation claims. She is admitted to practice in all state and federal courts in Virginia and represents clients in all stages of litigation. She has also represented clients in appellate matters pending before the Supreme Court of Virginia and the Fourth Circuit Court of Appeals. Ms. Darden also regularly counsels businesses regarding company policies and employment handbooks, employment compliance and various employment matters, from hiring to termination.



Robert I. Gosseen, Esq.

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Speaker Biography

Biography:

Robert Gosseen is *Of Counsel* and heads the Employment and Labor Law Practice Group at Ganfer & Shore. His more than 40 years of practice include extensive experience in representing and advising public and private companies, not-for-profit organizations, and individuals in significant employment and labor law matters. He appears in federal and state courts at both the trial and appellate levels, as well as in arbitration, mediation and administrative agency proceedings.

Mr. Gosseen was recently awarded the New York Association of Realty Managers' James F. Berg Peace Prize for lifetime achievement in employment relations in the building service industry. He is also recognized as a "New York Super Lawyer."

Prior to joining Ganfer & Shore in 2010, Mr. Gosseen was for 25 years a named partner in the New York firm of Gallagher Gosseen Faller & Crowley. Mr. Gosseen is a former special assistant to the president of the University of Iowa, where he advised the University and the Iowa Board of Regents on a variety of employment law issues. Mr. Gosseen was also an associate and partner at the New York firm of Graubard Moskowitz McGoldrick Dannett & Horowitz.



Francisco Peña, Esq.

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Speaker Biography

Biography:

Francisco Peña is a partner at CCN, where he has worked since 2000. He graduated from the Tecnológico de Monterrey (JD). Mr. Peña represents foreign investors doing business in Mexico, particularly in the areas of environmental, employment and labor litigation, health and safety and contract law. He has extensive experience negotiating collective bargaining agreements with Mexican unions before Mexican labor authorities. Prior to joining CCN, he worked as the legal director of Grupo CIGSA in Tampico, Tamaulipas; he also worked for Martínez Arrieta y Asociados, and Asesores Jurídicos S.C. in Monterrey, Nuevo León. He has written numerous articles and given presentations on environmental and labor law topics. He is a frequent speaker at seminars and conferences offered throughout the United States by M.L. Smith Publishers.



Jennifer M. Hurley, Esq.

Lockheed Martin Aeronautics Company
P.O. Box 748, MZ 1237
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jennifer.m.hurley@lmco.com

Speaker Biography

Biography:

Jennifer M. Hurley is an Associate General Counsel with Lockheed Martin Aeronautics Company in Fort Worth, Texas. As Associate General Counsel, Jennifer provides day-to-day legal advice and guidance to management and other personnel on employment and labor issues, including strategies for minimizing risks of litigation. Jennifer also assists in the company's defense of lawsuits and responses to investigations and other administrative proceedings.

Prior to joining Lockheed Martin, Jennifer specialized in employment and labor law for Thompson & Knight LLP in Dallas, Texas, where she served as outside counsel to LM Aero. Previously, Jennifer also practiced employment law at Carrington, Coleman, Sloman, and Blumenthal, LLP in Dallas, Texas and GableGotwals, P.C. in Tulsa, Oklahoma.

Jennifer serves on the Dallas Bar Association's Minority Participation and Aid to the Homeless committees. She was named a Texas Rising Star® by Thomson Reuters in 2013 and 2014.

Jennifer is admitted to practice law in Texas and Oklahoma. She received her J.D. with honors from Southern Methodist University Dedman School of Law and B.A. and M.A. degrees from Baylor University. Jennifer is married to Matt and has two sons, Josiah (4) and Caleb (2).



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“Patent Trolls – Effective Strategies for Avoiding and Interacting with them from the Perspective of In-House Counsel”

Thursday, June 11th, 2015 (11:00-12:15 p.m.)

Presented by:

James Francis – Fowler Bell PLLC (Lexington, KY)

Dan Pierron – Wideman Malek, P.L. (Melbourne, FL)

Jordan Sigale – Dunlap Coddling (Oklahoma City, OK)

- I. WHAT OR WHO IS A PATENT TROLL?**
 - i. Definitions
- II. RECENTLY IMPLEMENTED FEDERAL MEASURES TO COMBAT TROLL PRACTICES**
 - i. Enforcement Efforts
 - ii. Pending Legislative Efforts
 - iii. Judicial Efforts
- III. RECENTLY IMPLEMENTED STATE MEASURES TO COMBAT TROLL PRACTICES**
 - i. 18 States have enacted laws against bad faith patent infringement
- IV. TACTICS AND STRATEGIES FOR AVOIDING LAWSUITS**
 - i. Importance of Due Diligence
 - ii. Prevent the Issuance of Weak and Overbroad Patents
 - iii. Re-examination
 - iv. License or Assignment
- V. TACTICS AND STRATEGIES FOR MINIMIZING COST AND DISRUPTION**
 - i. Budget
 - ii. Attorney Fees
 - iii. Experts
 - iv. Testing
 - v. Reporting
 - vi. Litigation
 - vii. Insurance
- VI. RISK OF NO-SETTLEMENT LITIGATION**
- VII. POTENTIAL REWARDS OF NO-SETTLEMENT LITIGATION**
- VIII. CONSIDER YOUR INDUSTRY**

Speaker Biography



James Francis, Esq.

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www.fowlerlaw.com

Biography:

James M. Francis is *Of Counsel* in the firm's Intellectual Property and Commercial & Business Law Groups. He is a highly experienced patent and trademark attorney as well as a business law attorney. With experience built on years of practice, Mr. Francis is known for finding innovative solutions to highly complicated intellectual property, commercial and litigation matters.

He represents local, national and international clients in a variety of industries seeking US and foreign intellectual property protection including chemicals, electronics, fashion, medical devices and music. His litigation experience includes patent, trademark, copyright, products liability, and insurance bad faith matters, including several cases in the Eastern District of Texas. Mr. Francis has also drafted numerous intellectual property and software licenses, business purchase agreements, website / e-commerce terms of use and website/e-commerce privacy statements.



Daniel Pierron, Esq.

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Speaker Biography

Biography:

Dan focuses his practice on representing clients in the prosecution of patents and trademarks before the United States Patent and Trademark Office and counseling inventors and businesses on various intellectual property strategies.

Dan also focuses his practice on licensing his client's intellectual property and enforcing the intellectual property rights of his clients in litigation.

Dan is involved in his community and serves on the Board of Directors as well as the Chair for the Nomination and Recruiting Committee for March of Dimes Space Coast Division.

Dan encourages you to view our [Community Involvement](#) page to see how you can join Wideman Malek in lending a helping hand to others.

Professional Activities:

- Contributing author at TacticalIP.com
- Member of AIPLA, ABA-IPL, ISBA, IPLAC



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Speaker Biography

Biography:

Jordan Sigale practices in intellectual property, computer and patent law with a focus on patent and trade secret litigation and alternative dispute resolution. His work also extends to client counseling on issues of corporate and strategic planning involving copyrights, patents, trademarks, and trade secrets. He is extensively involved in patent prosecution for a variety of clients with specific focus on the interface between computers and end-users in an array of situations and transactions.

A hallmark of Jordan's work is his approach to finding creative, practical ways to achieve clients' immediate and long-range business goals by applying intellectual property licensing, procurement, and litigation strategies. He first strives to understand his clients' business histories and goals through in-depth conversations and then collaborates with and guides clients through strategic decision-making processes.

Jordan has served as lead litigation and trial counsel in district courts throughout the U.S. involving a variety of intellectual property issues including computer intrusion, copyright infringement, false advertising, design and utility patent infringement, trade secret misappropriation and trademark infringement. He has also served as lead litigation and trial counsel on a variety of antitrust claims, usually focused on the antitrust-intellectual property interface. Jordan has been extensively involved in coordinating foreign intellectual property litigation strategy in Australia, China, Europe, and Hong Kong.



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“Navigating Non-Compete Clauses”

Thursday, June 11th, 2015 (1:30-2:45 p.m.)

Presented by:

Shannon Davis – James, Potts & Wulfers, Inc. (Tulsa, OK)

William Ferebee – O’Donnell, Ferebee & Frazer, P.C. (Houston, TX)

Jason Frazer – O’Donnell, Ferebee & Frazer, P.C. (Houston, TX)

- I. **ENFORCEABILITY – DISCUSS THE FOLLOWING UNDER THE LAW OF THE RESPECTIVE STATES:**
 - i. Can the covenant be within the employment agreement?
 - ii. What constitutes sufficient consideration?
 - a. Is money alone sufficient
 - iii. What terms are enforceable?
 - a. Geographic restrictions
 - b. Time
 - c. Scope
- II. **REVIEW EXAMPLES OF NON-COMPETES PROVISIONS FOR DISCUSSION BY THE PANELISTS AS TO ENFORCEABILITY UNDER EACH STATE’S LAWS**
- III. **Q & A**

Speaker Biography



Shannon K. Davis, Esq.

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Biography:

Mr. Davis joined the firm in 2006, and his practice includes business law, real estate law, commercial law, civil litigation, complex litigation and appellate work. Prior to joining the firm, he was a solo practitioner representing a diverse clientele in various matters which included family law, criminal defense, appellate work, collections, transactional work, wills, trusts and probate. Mr. Davis has extensive litigation and appellate experience, including the prosecution of a class action adversary case in bankruptcy court, which consisted of approximately 1,100 class members.

Mr. Davis graduated from Oklahoma State University in 1987, receiving a Bachelor of Science Degree in Finance. After receiving his undergraduate degree, Mr. Davis took a position as an accountant with Conoco, Inc., where he worked until 1990. He graduated from the University of Oklahoma College of Law in 1993, receiving his Juris Doctorate with Distinction. While attending law school he was a member of the Oklahoma Law Review and the Dean's Honor Roll, received the American Jurisprudence Award, and served as an intern with the Oklahoma Tax Commission.

Mr. Davis is certified as a network attorney for AARP Legal Services Network.



William Ferebee, Esq.

O'Donnell, Ferebee & Frazer, P.C.

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Speaker Biography

Biography:

A founding member of the Firm, Bill is a true trial attorney, litigating in the court rooms of Harris and Montgomery County, the surrounding areas, statewide and nationally. A certified specialist in Civil Trial Law, Bill has focused his practice on business and complex litigation matters. Bill's practice also includes serving as City Attorney for the City of Shenandoah in Montgomery County, a task well suited to Bill and the firm in light of their long history with litigation and representation related to government.

Memberships and Associations:

- Houston and American Bar Associations
- State Bar of Texas (admitted 1977)
- U.S. District Court, Southern, Northern and Eastern Districts of Texas
- U.S. Courts of Appeals, Third and Fifth Circuits
- With U.S. Army, 1972-1974, 2nd Lieutenant
- Board Certified, Civil Trial Law, Texas Board of Legal Specialization

Speaker Biography



Jason Frazer, Esq.

O'Donnell, Ferebee & Frazer, P.C.

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Biography:

Since joining the firm in January 2007, Jason has worked extensively in its commercial litigation practice, becoming a shareholder in 2013. Representative cases include contract disputes, theft of trade secrets, validity of patents, and breach/enforcement of non-compete agreements. He joined to the firm with extensive experience in the management and operation of small to mid-sized businesses. Having personally started and managed several successful businesses, he understands the unique needs of small business owners, including the importance of cost management. Jason also works in the firm's intellectual property rights practice serving his clients to obtain trademark and copyright protections for their intellectual property, and handling resultant litigation. Representative clients range from multinational corporations to small, single owner enterprises. Jason's strong business background allows him understand the objectives of his clients from both a legal and business perspective and to tailor this understanding into a plan to meet his clients objectives.

Memberships and Associations:

- State Bar of Texas
- American Bar Association
- Houston Bar Association
- The Woodlands Bar Association
- American Inns of Courts
- Phi Alpha Delta, national legal fraternity
- Golden Key National Honor Society
- Pi Mu Epsilon, National Mathematics Honor Society



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“Getting the Most from Outside Counsel”

Thursday, June 11th, 2015 (3:00-4:00p.m.)

Presented by:

Darryl Horowitz – Coleman & Horowitz, LLP (Fresno, CA)

Brian Wagner – Mateer & Harbert, P.A. (Orlando, FL)

Moderated by:

Brian Restivo – The Woodmont Company (Fort Worth, TX)

I. CHOOSING THE RIGHT LAW FIRM FOR THE JOB

- i. Analysis for choosing firms
- ii. Financial considerations
- iii. Cultural considerations
- iv. Geographic considerations
- v. Experience
- vi. How Primerus works in finding qualified firms

II. SETTING EXPECTATIONS

- i. Scope-of-work expectations
- ii. Billing expectations
- iii. Communication expectations
- iv. Staffing expectations

III. COOPERATION/PLAN IMPLEMENTATION

- i. Division of labor between in-house and outside
- ii. Information/Fact gathering
- iii. Understanding pressures faced by in-house/outside
- iv. Timetables
- v. Debriefing/Review of matter upon conclusion

IV. GETTING VALUE FROM OUTSIDE COUNSEL

- i. Learning your business
- ii. Updates
- iii. Secondments

V. QUESTIONS/AUDIENCE DISCUSSION

Speaker Biography



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Biography:

Mr. Horowitz was admitted to practice in 1981. Prior to forming Coleman & Horowitz, LLP, he was a partner of the Fresno, California firm of Lerrigo, Nibler, Berryman, Coleman & Bennett. Prior to moving to Fresno, Mr. Horowitz was engaged in private practice in Orange County, California.

Mr. Horowitz has conducted all phases of litigation in the areas of banking, business disputes, securities fraud (class action and individual), construction, real estate, environmental, casualty insurance defense, personal injury and commercial collections, from initial client contact to settlement, mediation, arbitration and trial – court and jury (State and Federal Court) and administrative proceedings (before the United States Environmental Protection Agency, Department of Agriculture, National Labor Relations Board, California Department of Fair Housing and Employment, Worker's Compensation Appeals Board and Agricultural Labor Relations Board). He has also assisted in transactions, including incorporation, purchase and sale agreements, secured and unsecured transactions, and employment contracts. In the field of alternative dispute resolution, Mr. Horowitz has served as an arbitrator (for the American Arbitration Association, NASD Regulation, Inc., Better Business Bureau Dispute Resolution Center, and the Fresno and Madera County Superior Courts), mediator (privately and for the Better Business Bureau Dispute Resolution Center), special master (for Judge James Ware, United States District Court, Northern District of California) and judge pro tem (Fresno County Courts).

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- Orange County Bar Association
- Claims & Litigation Management Alliance
- Florida Building Materials Association
- Florida Citrus Sports-Team Selection Committee
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Brian Restivo is the Assistant General Counsel of The Woodmont Company in Fort Worth, Texas, which is a multi-state commercial real estate company providing development, asset management and brokerage and construction services. He provides day-to-day counsel on core corporate matters, including providing legal support to human resources, as well as negotiating transactions and managing litigation. He obtained his license to practice law from the State Bar of Texas in November 2000.



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“Avoid Being the Next Data Breach Headline: Lessons for In-House Counsel”

Thursday, June 11th, 2015 (4:00-5:15 p.m.)

Presented by:

Gerry Balboni – Krevolin & Horst, LLC (Atlanta, GA)

Halsey Knapp – Krevolin & Horst, LLC (Atlanta, GA)

Bernie Resser – Greenberg Glusker (Los Angeles, CA)

Khizar Sheikh – Mandelbaum Salsburg P.C. (Roseland, NJ)

Moderated by:

Debera Hepburn – FTS International Services (Fort Worth, TX)

Part 1 – Introduction with Real World Case Studies

Outline for Presentation on Notable Data Security Breaches and Lessons Learned

Bernard M. Resser, Greenberg Glusker, LLP

1. What is a Data Breach?

a. Slide

Experian, a leader in global information services, provides the following definition:

“A data breach occurs when secure data is released to or accessed by unauthorized individuals. The lost data may be sensitive personal data the company has collected on employees or customers or proprietary and confidential data regarding business operations and trade secrets. Data breaches can involve the loss or theft of digital media or physical data and devices, such as computer tapes, hard drives, mobile devices and computers. The incidents pose serious risks for organizations as well as for the individuals whose data has been lost.”

See, “WHEN, NOT IF... Anatomy of a Data Breach,” 57 No. 3 DRI For Defense. 66 (March 2015)

2. Can companies immunize themselves from cyber-attacks and data breaches?

a. Slide:

“There are two types of companies: those who have been hacked, and those who don't yet know they have been hacked,” explained John Chambers, CEO of Cisco at the World Economic Forum.

b. Show Clip from Daily Show

<http://thedailyshow.cc.com/videos/8lhlnj/in-deep-a-look-at-the-world-of-online-security> (begin at 1:53

“So are you saying . . .”)



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- i. The only way to prevent data breaches is to destroy your computers
- c. The recent cyber-attacks on Sony, Anthem – Blue Cross, JPMorgan Chase, Target and Home Depot show that even America's largest and most well financed companies, several of whom thought they were prepared beyond industry standards, are vulnerable.
- 3. Why does it seem cyber-crime is growing even though it has been in the news since Jon Stewart's hair was brown?
 - a. Vast amounts of potentially valuable data is expanding exponentially
 - b. Aggressive and inventive cybercriminals
 - c. Inattention to Data Security
 - d. Slide:

"Cybercrime is becoming everything in crime. . . . Because people have connected their entire lives to the Internet, that's where those who want to steal money or hurt kids or defraud go." James Comey, director of the FBI (See <http://www.cbsnews.com/news/fbidirector-james-comey-on-threat-of-isis-cybercrime/>)

- e. To give you an idea of how much of this is happening, see (Slide):
 - i. Privacy Rights Clearinghouse: www.privacyrights.org
 - ii. Full database, that allows searching by multiple fields including company name, is located at <http://www.privacyrights.org/data-breach>
 - iii. Verizon, 2015 Data Breach Investigations Report
 - iv. McAfee, White Paper: Data Loss By the Numbers
- 4. How many records were breached in these five well-publicized cases and others of similar magnitudes?
 - a. Slide: Table of data breaches ranked by number of records

Company	Records Exposed	Date Announced
Experian	200,000,000	November 2013
eBay	145,000,000	May 2013
Target	110,000,000	Jan 2014 and Dec 2013
J.P.Morgan Chase	83,000,000	August 2014
Anthem	80,000,000	February 2015
Sony (PlayStation)	77,000,000	2011
Home Depot	56,000,000	September 2014
Sony ("The Interview")	47,000 + TBs of data	November 2014

Sources: Privacy Rights Clearinghouse; Adobe; Staff reports; Wall Street Journal

- 5. Are these companies indicative of those that are most vulnerable?



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- a. Yes and No. According to 2013 IBM Security Services Cyber Security Intelligence Index
- b. Five primary industries targeted:
 - i. Manufacturing: 26.5%
 - ii. Financial/insurance: 20.9%
 - iii. Information and communications: 18.7%
 - iv. Health and social services (7.3%)
 - v. Retail and wholesale (6.6%)

See, 2013 IBM Security Services Cyber Security Intelligence Index

- c. Primary Vulnerabilities:
 - i. Cyber espionage involving unauthorized network intrusions: 22% (including professional, transportation, manufacturing, mining, public sector)
 - ii. Point of sale intrusions: 14%
 - iii. Payment card skimmers: 9%
 - iv. Insider and privilege misuse: 8%
 - v. Crimeware: 4%
 - vi. Misc. Errors: 2%
 - vii. Theft: 1%

See, 2013 IBM Security Services Cyber Security Intelligence Index

6. What are the costs to these companies of the breaches that occurred?

- a. This is a matter of some debate:
 - i. Symantec researcher Larry Penomon reported in 2014 study that estimates companies spend \$201/ compromised record and the average cost is \$5.85 million per company.

See, "2014 Cost of Data Breach Study: Global Analysis" Penomon Institute, LLC; Melissa Ventrone, "Data Management and Security, Hold a Fire drill: Successfully Managing the Complexities of Data Breach" DRI for the Defense March 2015

- ii. Survey by Javelin Strategy found nearly one in three data breach victims was the victim of fraud such as ID theft that same year
- iii. Recent Fortune.com article minimizes financial impact: "How much do data breaches cost big companies? Shockingly little" <http://fortune.com/tag/home-depot/> March 27, 2015

"They don't seem to cost all that much." That is the stunning conclusion of an analysis by Benjamin Dean, a fellow at Columbia University's School of International and Public Affairs. Dean—who also has a



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background in accounting—pored over 10-K filings for Sony SNE, Home Depot HD, and Target TGT, after their recent, well-publicized security breaches. Keeping an eye out for breach-related expenses in these companies' quarterly financial reports, Dean discovered that the actual expenses reported by these companies amounted to less than 1% of each company's annual revenues.

"But Dean acknowledges that over time consumer faith may erode, but he says, for now, "You can't see losses and effects on the bottom line in terms of reputational damage."

"In fact Sony seems to have been guided by this notion, according to Fortune: Sony Pictures' former executive director of information security. In 2007, he told CIO Magazine that "'it's a valid business decision to accept the risk' of a security breach...I will not invest \$10 million to avoid a possible \$1 million loss."

See: <http://fortune.com/tag/home-depot/>

1. Estimated cost of Target attack: \$300 million

See, Brian Krebs, The Target Breach: By the Numbers, Krebs on Security (May 14, 2014), available at [http://krebsonsecurity.com/2014/05/the-target-breach-by-the-numbers/.](http://krebsonsecurity.com/2014/05/the-target-breach-by-the-numbers/))

2. This does not address lost profits:
 - a. Target's profits fell 40%
3. Home Depot reported \$43 million in expenses arising from the breach
4. Estimated loss to Sony of \$70-80 million in direct costs and \$100 million in indirect costs.
5. Lawsuits. Filed within hours of breach disclosures by Anthem and Sony. Home Depot named in 44 consumer class actions; Target named in > 90 lawsuits
6. The Massive Cost of the Sony Cyber-attack. The hack might be the most damaging ever--financially and otherwise.
 - a. The studio's reputation is in tatters as embarrassing revelations spill from tens of thousands of leaked emails and other company materials.
 - b. The attack is possibly the costliest ever for a U.S. company, said Avivah Litan, a cybersecurity analyst at research firm Gartner. "This attack went to the heart and core of Sony's business and succeeded," she said. "We haven't seen any attack like this in the annals of U.S. breach history."
 - c. Box office: \$120M - \$40M = \$80M
 - d. Spoilers: Script of next Bond movie: "Spectre"
 - e. Talent: insults
 - f. Lawsuits: Employees and former employees



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7. Home Depot:

- a. Breach is expected to cost the company \$62 million, according to Reuters and [USA Today](#).
- i. Limited Harm to Business. But the home improvement behemoth's business doesn't appear to have taken much of a blow. Home Depot shares have gained 18 percent in 2014, according to [The Associated Press](#).

7. What is the Cyber Brach Hall of Fame/Shame?

- a. Target: Disclosed December 2013, names, credit cards, email addresses of 110 million users
- b. JPMorgan Chase: August 2014, 83 million accounts
- c. Home Depot: September 2014, 56 million credit and debit card accounts, and 54 million email addresses
- d. Sony: November 2014, SSN for 47,000 employees, data on all servers destroyed, embarrassing emails revealed (affecting "vendor" relations), scripts leaked (Bond "Spectre"), films downloaded (Annie), Chair resigned
- e. Anthem: February 2015, 80 million SSN's of customers and employees

8. What Went Wrong and Right for these companies?

- a. Target:
 - i. Target was striving to be different. Increased info security staff tenfold since 2006, hired FireEye to implement CIA level security.
 - ii. Credentials used to enter were probably from HVAC vendor
 - iii. Target's state of the art security system detected but the company failed to act:

"System creates a parallel computer network and fools hackers into thinking they are in the original network.

"The breach could have been stopped there without human intervention. The system has an option to automatically delete malware as it's detected, but according auditors Target's security team turned that function off.

"Hackers had two weeks to pillage credit card numbers unmolested.

"Hackers cloaked their bad code with names of legitimate software used by companies to protect card and payment data.

"If Target's security team had followed up on the earliest alerts from the FireEye system, it could have been right behind the hackers and blocked the escape path of the data."



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See, DataSecurityTargetBusinessweek.pdf -- "Missed Alarms And 40 Million Stolen Credit Card Numbers: How Target Blew It," Bloomberg Businessweek, March 13, 2014.

b. Sony

"US Agencies were notified and then went silent, failing to tell Sony of connection to N. Korea until after it cancelled wide release of the film

"Officials with NATO (National Association of Theater Owners) called Homeland Security but they said officials there had not heard of the theat.

"United States intelligence officials, evaluating the software, techniques, and network sources used in the hack, allege that the attack was sponsored by North Korea. North Korea has denied all responsibility, and some cybersecurity experts have cast doubt on the evidence, alternatively proposing that current or former Sony Pictures employees may have been involved in the hack."

See, Barrett, Yadron, "Sony, U.S. Agencies Fumbled Cyberattack" Wall Street Journal Online, Feb. 22, 2015, <http://www.wsj.com/articles/sony-u-s-agencies-fumbled-after-cyberattack-1424641424>

"Sony Pictures' former executive director of information security. In 2007, he told CIO Magazine that "it's a valid business decision to accept the risk' of a security breach...I will not invest \$10 million to avoid a possible \$1 million loss." <http://fortune.com/tag/home-depot/>

"Sony's past inability to protect itself from the LulzSec hacktivist group as proof that the latest breach is the result of a "sloppy" error made by the firm's IT department.

"This was a perfect example of sloppy IT security and a CISO [chief information security officer] who did not implement proper privileged identity management or a disaster recovery backup plan for continuity of business," he said. "The consequences were a loss of control over his environment caused by a focus on convenience of IT rather than the security of the enterprise. "The now disbanded Lulzsec group breached a number of internal systems and public facing websites during a wave of cyber-attacks in 2011.

See, Sony hack: Firms must learn from its mistakes by Alastair Stevenson, v3.co.uk 26 Nov 2014

<http://www.v3.co.uk/v3-uk/news/2383347/hackers-blackmail-sony-pictures-after-website-attack>

- i. Crippling computer problems for workers at Sony, who were forced to work with pen and paper. "We even fired up our fax machine," one employee told the LA Times.
- ii. "The Interview's" film's New York premiere was cancelled and theater chains cancelled screenings, leading to Sony announcement that it "decided not to move forward with the planned December 25 theatrical release." That decision was roundly criticized by some in Hollywood.
 1. "Wow. Everyone caved," actor Rob Lowe wrote on Twitter. "The hackers won. An utter and complete victory for them. Wow."
 2. Comedian Jimmy Kimmel tweeted that the decision by theatres to refuse to show the film was "an un-American act of cowardice that validates terrorist actions and sets a terrifying precedent."



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3. President Obama later called Sony's decision a mistake.
 - iii. What did the hackers steal?
 1. An early version of a script for the next James Bond movie, Spectre
 2. Five Sony films, including "Annie," which was to be released in Christmas Day was downloaded up to a million times.
 3. Brad Pitt's "Fury," was also shared.
 - iv. What information has been revealed?
 1. Sony's private company information including salaries and employees' social security information.
 2. Confidential emails between Sony workers proved to be the most sensitive and embarrassing.
 3. The emails showed that female leads including Amy Adams and Jennifer Lawrence were paid less than their male co-stars.
 4. Sony executive Amy Pascal made jokes about black-themed movies that might be among President Obama's favorites.
 5. Angelina Jolie was branded a "minimally talented spoiled brat" in a private email from producer Scott Rudin.
 6. Sony has contacted some media outlets asking them to exercise caution over the leaked material they report on.
 - a. Aaron Sorkin wrote an opinion article criticizing news media for releasing the stolen information
 7. WikiLeaks released a database of Sony emails in April 2015
- c. JPMorgan Chase:
 - i. Avoidable: JPMorgan installed a simple security fix to an overlooked server in its network.
 - ii. JPMorgan breach started when cyber criminals stole the login credentials of a bank employee.
 - iii. The data theft could have been avoided if the bank had installed a two-layered security system (two-factor authentication) on all of its servers (like in most big banks)
 - iv. JPMorgan overlooked one of its network servers in the installation of a two-factor authentication scheme, which left the bank susceptible to an attack.
 - v. Simple failure of inattention to detail.
- d. Home Depot:
 - i. Password stolen from vendor (parallel to Target); Segmentation issues between servers with sensitive data and those accessible to vendors
 - ii. Biggest retail credit card breach on record
 - iii. Vulnerability in Windows; Microsoft patch came too late



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- iv. Home Depot had recently started upgrade. While hackers were moving undetected, the company was putting finishing touches on 45 page playbook on how to respond to a hack.
- v. Irony: “We believed we were doing things ahead of the industry. We thought we were well positioned. – Home Depot Chair of the Board of Directors Blake.
- vi. “As previously disclosed, the malware used in the *attack* had not been seen in any prior *attacks*. . . . “
<https://corporate.homedepot.com/MediaCenter/Documents/Press%20Release.pdf>

e. Anthem:

- i. Detected breach itself
- ii. Promptly notified FBI and customers
 - 1. “Organizations don’t typically provide information this early on – David Damato, Managing Director, FireEye, Inc.
- iii. Investigators tracked the leaked data to outside web-storage service and were able to freeze it there.
 - 1. Not clear if they were able to copy it to another location.
 - 2. Hackers used common web storage co. to avoid detection.
- iv. Reset all employee passwords
- v. Blocked access that involves only one password
- vi. Failures:
 - 1. did not encrypt SSNs
 - 2. Anthem makes a big deal that health info was not breached, i.e. no HIPPA violation, but SSNs allow more profound fraud
- vii. Praise. Executives were notified and involved immediately. Anthem reported the incident to the FBI. Anthem’s CEO issued a public statement six days after the initial detection. Joshua Campbell, an FBI spokesman, said, “Anthem’s initial response in promptly notifying the FBI after observing suspicious network activity is a model for other companies and organizations facing similar circumstances. Speed matters when notifying law enforcement of an intrusion, as cyber criminals can quickly destroy critical evidence needed to identify those responsible.”

See, http://www.nytimes.com/2015/02/06/business/experts-suspect-lax-security-left-anthem-vulnerable-to-hackers.html?_r=0:

- viii. Criticism. “Although the FBI has been singing Anthem’s praises for its prompt response, its customers were not comforted. The day after CEO Joseph Swedish issued the public announcement, two class actions were filed in federal courts, alleging, in part, that Anthem unreasonably delayed informing customers and failed to protect customers’ information and properly encrypt data. Customers also assert that Anthem’s initial statement left too many questions unanswered. One plaintiff’s counsel accused Anthem of being “evasive” in its



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remarks and responses. The two class actions are only the beginning of what will certainly be years of litigation fallout. “

- ix. “The FBI, which is investigating the Anthem breach, complimented the company's quick response to the hack.”

"Anthem's initial response in promptly notifying the FBI after observing suspicious network activity is a model for other companies and organizations facing similar circumstances," a statement from the FBI said. "Speed matters when notifying law enforcement of an intrusion, as cyber criminals can quickly destroy critical evidence needed to identify those responsible."

"Anthem's fundamental mistake was to assume that information within its database was secure, said John Kindervag, an analyst with Forrester Research, and thus not apply the same protective standards the company uses when sending data to a doctor's office."

See, <http://www.nytimes.com/2015/02/06/business/experts-suspect-lax-security-left-anthem-vulnerable-to-hackers.html? r=0>

- i. “We have to assume the thieves are either in the house or are going to break in. They will always build a taller ladder to climb over your perimeter security.”
- ii. Anthem said additional encryption would not have thwarted the attack because an administrator's credentials were compromised and security protocols were bypassed.

See, <http://www.latimes.com/business/la-fi-anthem-hacked-20150204-story.html#page=1> 2.5.15

- x. The company established a website, www.anthemfacts.com, where members can access information about the situation. There is also a dedicated toll-free number. Some Anthem customers received an email notification about the incident from the company's chief executive, Joseph Swedish.

9. Have the criminals been caught?

Law enforcement still hasn't publicly identified -- or arrested -- those who broke into Target, Home Depot and JPMorgan and [stole millions of credit cards and lots of personal data](#).

10. What are the Key Take-Aways?

- a. Create interdisciplinary collaborative teams and communication protocols to address prevention and response: including Information Technology (especially Information Security), business unit heads, compliance, HR, PR/Investor Relations, General Counsel, and of course outside counsel – to assist with strategies for breach notification, regulatory investigations, and litigation.
- b. Encrypt most sensitive data even within the firewall.
- c. Add programs that identify use of company data by *authorized* users that is out of ordinary to detect hackers with stolen credentials called User Behavior Analytics or UBA



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- d. Due diligence to include vendors and portals for vendors; segmentation.
- e. Manage fall-out with "managed transparency" "Be up front with regulators, consumers, employees, and shareholders and do that in a timely way." Zack Warren, "Data Breach 411: Are You Prepared?" Inside Counsel, March 30, 2015.
- f. Include monthly IT security assessment with every monthly financial report.
- g. Cyber Insurance.
- h. Communication is key!
- i. My recommendation to those that had their information breached is the following: Sign-up for identity theft protection as this will alert you if someone has tried to open up a credit card in your name, which requires a SSN. Lastly, I would be very careful in opening up attachments or clicking on links within emails that claim to be coming from Anthem."

<http://www.securityweek.com/feedback-friday-industry-reactions-anthem-data-breach>

11. Forecast

- a. Chip and PIN by Oct. 2015
- b. Health care: growing threat
- c. Human Factors: ways of intervening

Saryu Nayyar, CEO of Gurukul: That is what makes these breaches so difficult. Human factors. To deal with Human Factors as a risk variable, there is an emerging trend among CIO and CSOs of major corporations that involves wrapping user and machine behavior analytics around identities. Gartner calls this approach User Behavior Analytics or UBA. Meta data from these identities can be cross correlated to SIEM, DLP and other defense-in-depth security data sets to provide a 360 degree context of who was doing what, when, and where. So even if you have devices that are infected in a drive-by download or a watering hole attack, or via email using spear phishing campaign, the user's identity will be tracked to detect anomalous or unusual behavior that is exhibited and unknown even to them. You can start to predict bad behavior (even if unintentional) to prevent data loss."

<http://www.securityweek.com/feedback-friday-industry-reactions-anthem-data-breach>

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"SECURITY BREACH LITIGATION," E-Commerce and Internet Law, Ian C. Ballon (Review of litigation and case law.)

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"SONY, U.S AGENCIES FUMBLED AFTER CYBERATTACK," Wall Street Journal, February 22, 2015.

"HEALTH INSURER ANTHEM HIT BY HACKERS." Wall Street Journal, February 4, 2015.

"HOME DEPOT HACKERS EXPOSED 53 MILLION EMAIL ADDRESSES: HACKERS USED PASSWORD STOLEN FROM VENDOR TO GAIN ACCESS TO RETAILER'S SYSTEMS," Wall Street Journal, November 6, 2014.

<http://www.privacyrights.org/data-breach-asc?title=target> -- Target Corp. (Privacy Rights Clearinghouse, Chronology of Data Breaches)

<http://www.privacyrights.org/data-breach-asc?title=sony+pictures> -- Sony Pictures (Privacy Rights Clearinghouse, Chronology of Data Breaches)

<http://www.privacyrights.org/data-breach-asc?title=anthem> -- Anthem (Privacy Rights Clearinghouse, Chronology of Data Breaches)

<http://www.privacyrights.org/data-breach-asc?title=home+depot> -- Home Depot (Privacy Rights Clearinghouse, Chronology of Data Breaches)

<http://www.privacyrights.org/data-breach-asc?title=jp+morgan> -- JP Morgan Chase (Privacy Rights Clearinghouse, Chronology of Data Breaches)

Part 2 – Prevention/Preparation

Corporate Governance – Fiduciary Duties

- Duty of Loyalty and Oversight Liability (In Re Caremark Int'l Claim)
- Directors have a duty of oversight
 - An affirmative obligation to actively monitor/manage corporate performance and risks



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- Response must be commensurate with the level of risk
- Cannot abdicate responsibility
 - No absolute delegation to management or specific department (such as IT)
- “Unconsidered Failure of the Board to Act”
 - Breach of the duty of loyalty
 - How affected by 102(b)(7) exculpation clause
 - Personal liability

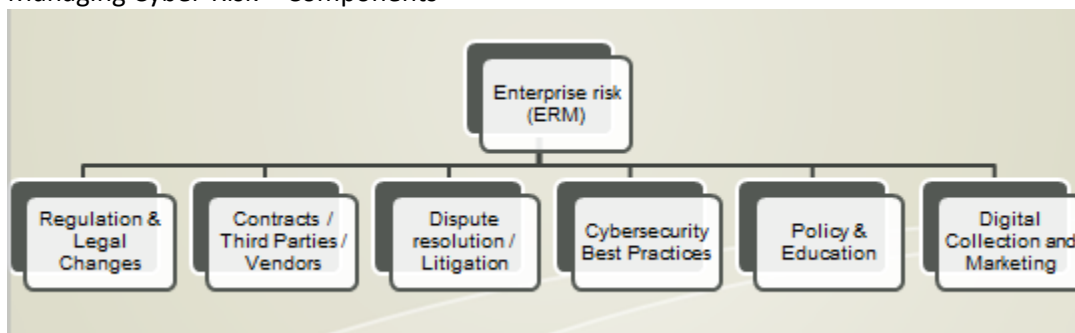
Corporate Governance – Legal Guidance

- SEC Public Company Cybersecurity Guidance (October 2011)
- SEC Office of Compliance, Inspections and Examinations (OCIE) National Exam Program Risk Alert (April 2014)
- Financial Industry Regulatory Authority (FINRA) “Sweep” Program (January 2015)
- Other Federal Laws/Standards That Impact Cyber
 - National Institute of Standards & Technology (NIST) Framework
 - Federal Trade Commission (FTC) Act
 - Gramm-Leach-Bliley Act (GLBA)
 - Health Insurance Portability and Accountability Act (HIPAA) and Health Information Technology for Economic and Clinical Health Act (HITECH Act)
 - Payment Card Industry Data Security Standard (PCI-DSS)
- State Efforts
- Recent Federal Initiatives

Corporate Governance – Shareholder Lawsuits & Enforcement Actions

- Case Studies
 - TJX (2011)
 - Target (2014)
 - Wyndham Worldwide (2014)
- Exposure Threat
 - Civil Class Actions
 - Regulatory Enforcement Actions (FTC, FCC, HHS, State AGs)

Managing Cyber-Risk – Components





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Managing Cyber-Risk – Preparation & Oversight

- Structure
 - Team – Form a working group to manage cyber risks
 - Structure – Formally assign oversight responsibility
 - Communication - Regular interaction between management and CTO, CSO, CISO, etc.
- Managing the Risk
 - Understand – Know your company's cyber risk profile, e.g. how likely are you to be attacked vs. repercussions, how it is determined, and how it changes over time
 - Advise – Speak to your peers and experts; ask how they are addressing the risk
 - Adopt and Monitor – Best Practices to manage cyber threats, including obtaining the right insurance
- Crisis Response
 - Plan – Develop robust Incident Response procedures
 - Prepare – Run through simulations to test procedure
 - Update – Regularly update your response plan to reflect current conditions

Part 3 – Specific Policies/Training

Why develop policies?

According to the consulting firm Mandiant:

100% of data breach "victims" have up to date anti-virus software The median number of days that an "advanced" attacker is undetected 243 100% of the breaches involve stolen credentials

As noted by former FBI Director, Robert Mueller, breach is inevitable. The best defense to this risk are robust data security policies and incident response plans.

1. Development of data security policy

- Who has has a seat at the table?
- What elements should be included?
- Ongoing monitoring

2. Development of an incident response plan

- Who has has a seat at the table?
- What elements should be included?
- Testing the plan



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Part 4 – Managing a Crisis if it Does Occur

- A. Be fast and be accountable
1. Security breaches happen so frequently that the story's half life cycle is getting shorter all the time.
 - (a) AT&T Services, Inc. pays \$25 million to the FCC
 - (b) Anthem- 80 million files stolen when non-encrypted info was captured
 - (c) TurboTax halts state filings
 2. The state law consensus seems to be forming around a 30 day deadline to advise customers.
 - (a) Material gains in goodwill and reduced exposure are gained from a more rapid response
 - (b) Children's letter arrived more than 45 days late
 3. This is not all good news as the expected time period within which you have to respond has shrunk as well.
 - (a) Because of the prevalence of these breaches, the public will not understand why you don't have a plan in place. This is not Y-2000 where the threat turned out to be illusory;
 - (b) Have your PR firm and mass communications vehicle in place
- B. The first communication is the most important as the goal is to demystify the story so that the public, customers, investors and regulators direct their attention elsewhere.
1. Newsworthiness is related to how much outsiders discover information from other sources; Build trust by being the authoritative, comprehensive and nearly exclusive source of information.
 - (a) Delta airlines TV screen message: "We are here to gain your trust"
 - (b) This means sharing bad news as well (Tough one for lawyers)
 2. Speak from the top.
 3. Tell what you know and what you don't know; explain what you know, what you are doing to find out and the timetable you expect to complete that task.
 - (a) Plane sitting on runway example
 - (b) If 90% complete, communicate
 4. Don't speak in absolutes; technicians always seem to be overly optimistic with projected completion dates "According to our independent experts" the scope of problem is x and the time to cure is Y.
 5. Express regret and strongly consider an apology to those harmed and explain what corrective measures are being taken.
 6. Explain your cooperation with law enforcement authorities.
 - (a) Understand the risks of cooperation
 7. Acknowledge that circumstances can change.



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- C. Offer meaningful and accountable remedies: measures the company is taking on behalf of the victims, not solely directing them to resources for self-help. Not simply we have provided you with free credit reporting for one year.
1. Don't make the customer do anything; it's not the customers' problem
 2. Use this as an opportunity to create value

Program Takeaways

1. Create interdisciplinary collaborative teams and communication protocols to address prevention and response: including Information Technology (especially Information Security), business unit heads, compliance, HR, PR/Investor Relations, General Counsel, and of course outside counsel – to assist with strategies for breach notification, regulatory investigations, and litigation.
2. Encrypt most sensitive data even within the firewall.
3. Add programs that identify use of company data by authorized users that is out of ordinary to detect hackers with stolen credentials called User Behavior Analytics or UBA
4. Due diligence to include vendors and portals for vendors; segmentation.
5. Manage fall-out with “managed transparency” “Be up front with regulators, consumers, employees, and shareholders and do that in a timely way.” Zack Warren, "Data Breach 411: Are You Prepared?" Inside Counsel, March 30, 2015.
6. Include monthly IT security assessment with every monthly financial report.
7. Cyber Insurance.
8. Communication is key!
9. Train employees with fake phishing tests.
10. “My recommendation to those that had their information breached is the following: Sign-up for identity theft protection as this will alert you if someone has tried to open up a credit card in your name, which requires a SSN. Lastly, I would be very careful in opening up attachments or clicking on links within emails that claim to be coming from Anthem.”
11. <http://www.securityweek.com/feedback-friday-industry-reactions-anthem-data-breach>
12. Why cybersecurity should be embraced by the law department and not sit within the IT department alone.
13. The key risks: hacktivists, organized criminals, government spying, and corporate insiders.
14. How in-house counsel can manage cyber-risk, starting with enterprise risk and then looking at specific aspects of risk: regulation, contracts, third parties, dispute resolution, cybersecurity, and policy and education, awareness and vigilance.
15. How to craft and test incident response plans.
16. The significant impact of a data breach make cybersecurity a business risk, not simply an IT risk. Strong executive and board support is critical to development of a culture of security to mitigate this business risk. Routine employee training reinforces this culture and is the first line of defense against "social engineering" attacks - such as phishing.
17. Periodically (at least annually) lead a review of the company's data security policy - Does the policy clearly define roles and responsibilities to identify, assess, and manage cybersecurity risks across the enterprise? Is there a process for identifying, classifying, and securing sensitive data? Are logs of file level access maintained? Is any surveillance of unusual file activity?



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18. Periodically review (or develop) an incident response plan that addresses (a) information security (b) compliance, (c) public relations, (d) business continuity, (e) cyber insurance, and litigation. Does the Plan address damage assessment and containment? remediation? eradication? crisis management? preservation of evidence? compliance with state (and perhaps federal) breach notification laws?
19. Before an incident - engage outside advisors - data forensics, IT security, public relations, and outside legal counsel.

“[T]here are only two types of companies: those that have been hacked and those that will be.”

Robert Mueller, Former FBI Director



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Biography:

Gerry Balboni has over twenty years of corporate law experience representing growth companies and individuals that buy, sell, and invest in growth businesses. Gerry represents growth companies seeking venture capital investment, venture capital and private equity funds, buyers and sellers of businesses, and licensors and licensees of technology and software. Gerry speaks to groups on topics such as software licensing, acquisition of technology companies, venture capital, and controlling legal costs in corporate finance transactions.

Gerry has written the recent developments column for the Technology Law Section of the State Bar of Georgia, and has written articles on topics involving venture capital, mergers and acquisitions, securities, and taxation. Gerry is a member of and an active participant in the Atlanta Venture Forum, the Technology Alliance of Georgia, the Computer Law Association, the committees on the Law of Cyberspace, Small Business, and Negotiated Acquisitions of the Business and Banking Law Section of the American Bar Association, and the Technology Section of the State Bar of Georgia.



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Biography:

Halsey specializes in business litigation and tries civil cases in state and federal courts in Georgia and other states. His multifaceted practice includes representing clients in complex commercial litigation, business tort, trade secret, restrictive covenant, technology litigation, and employment law. He handles all of his clients business issues including employment issues, relationships with suppliers, relationships with competitors, and problems with governance and regulators. Halsey also represents executives in business formation, strategic employment, compensation negotiations and business break-ups, and is a frequent speaker on jury selection and complex commercial litigation.

Halsey served as the President of the Lamar American Inn of Court from 2001-2004, has been on the Executive Committee since 2000, and a Master since 1992. He is also the secretary of the Eleventh Circuit Historical Society, and was formerly a board member of the Atlanta Bar Association Litigation Section.

Halsey received his undergraduate degree from Cornell University before earning his law degree from Emory University School of Law, where he received the Best Brief Award in the Law Day Competition and served as President of the Student Bar Association.



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Biography:

Bernard M. (Bernie) Resser is a seasoned and accomplished trial lawyer and former federal prosecutor. He applies experience gained over 30 years and uses cutting-edge technology to deliver winning results for a diverse and sophisticated business clientele.

Bernie's client-centered approach achieves successful resolution of disputes as quickly as possible through strategic motions and mediations and, when necessary, trials and appeals. His litigation practice encompasses business disputes involving corporate, real estate, intellectual property, commercial, and unfair competition matters across many industries.

Bernie's effective use of state-of-the-art trial presentation techniques has been featured in the *National Law Journal* and the *Law.com*. Successes achieved for his clients have been reported in the *Los Angeles Times* and the *Los Angeles Daily Journal*. Bernie's consistently strong performance is reflected in his preeminent (AV 5.0 out of 5) peer review rating with Martindale-Hubbell. Also, he has been recognized as a "Southern California Super Lawyer" in Business Litigation every year since 2005, as published in *Los Angeles Magazine* and the *New York Times*.

Bernie grew up and attended high school, college, and law school in Los Angeles. He is active in the community, having served on the boards and as an officer of non-profit organizations, including as president. Bernie and his wife of over 30 years have two adult children. He enjoys golf, gardening and Lakers games.



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Khizar Sheikh is a Partner and the chairperson of the Privacy, Cybersecurity & Information Management Group. Khizar provides counsel to his clients in the areas of cybersecurity, fraud, eDiscovery, and corporate governance. He also serves as outside litigation and general counsel. He has a particular focus on technology and healthcare organizations, and the privacy, data security, and confidentiality obligations that these organizations are facing today.

Khizar has been selected as a fellow of Lead NJ and Leadership Morris, published articles and given lectures in the areas of privacy, cybersecurity, records retention, confidentiality, leadership, and civics education, and taught at Seton Hall Law School as an adjunct professor. Khizar has been appointed by the New Jersey Supreme Court to the District XA Ethics Committee.

Professional Association Memberships:

- International Association of Privacy Professionals (IAPP)
- Association of Certified Fraud Examiners (ACFE)
- American Bar Association (ABA)
- New Jersey State Bar Association (NJSBA)

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