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Brief Speaker Bios:



Stuart T. O'Neal

Stuart T. O'Neal is a trial attorney and litigator at Burns White, where he maintains an active practice throughout Pennsylvania. Mr. O'Neal is Co-Chair of the firm's Cybersecurity and Professional Liability groups and was named its first Chief Privacy Officer in 2014. Mr. O'Neal's trial practice revolves around commercial, contractual and employment disputes, as well as matters related to medical malpractice on an individual and corporate level. Mr. O'Neal has been retained by clients to handle internal investigations involving the misappropriation of funds, embezzlement and internal audits. Mr. O'Neal has also been retained by large institutions to defend class actions in data breach and privacy actions.

Mr. O'Neal obtained his J.D. from Villanova University. He is a Board Member and past President of the Professional Liability Defense Federation, as well as Chair of its Data Breach/Privacy Committee.



Caroline McCaffery

Caroline has 15 years of experience in counseling and providing legal services to technology start-up companies, both as in-house and outside counsel. Caroline has spent a majority of her time as in-house counsel focused on developing privacy and security infrastructure. Caroline received her JD from New York University School of Law, is admitted to both the CA and NY bars and is a Certified Information Privacy Professional (CIPP/US).

► For more information about the speakers, you can visit: <u>http://theknowledgegroup.org/event_name/2015-cyber-security-bills-and-impact-on-data-breaches-explored-live-webcast/</u>

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2015 Cyber Security Bills and Impact on Data Breaches Explored

Summary

In this two hour LIVE Webcast, The Knowledge Group has assembled a panel of notable leaders and professionals to provide the audience with an overview of newly enacted cyber security laws. The speakers will discuss the benefits and implications of the new acts and offer best practices to help in Understanding the 2015 Cyber Security Bills. This CLE course will also provide the audience with useful tips and effective measures to ensure the proper management and protection of corporate data. Guidelines on cyber risk assessment and planning essential in preparing a company from possible cyberattack and financial loss will also be discussed.

Key topics include:

- National Cyber Security Protection Act
- Federal Information Security Modernization Act
- Cyber Security Enhancement Act
- · Cybersecurity Workforce Recruitment and Retention Act
- Cyber Security Workforce Assessment Act
- Private-Sector Information Sharing Process
- Codifying Cyber Security Framework
- Reform of Federal Information Systems
- · Federal Government's Cybersecurity Workforce
- Compliance Issues
- Cyber Risk Assessment
 - · Identifying Most Valuable Corporate Assets to Protect
 - Identifying Threats
 - Quantifying Risks of Cyber Attack
- Strategies for Cyber Risk Mitigation
 - Prevention
 - Resolution
 - Restitution
- Transferring Risks through Cyber Insurance

Featured Speakers:



SEGMENT 1:

Stuart T. O'Neal Trial Attorney and Litigator **Burns and White**





Clarifai, Inc.

Caroline McCaffery

General Counsel, Chief Privacy Officer

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Introduction

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DATA BREACH & Cyber Liability

August 12, 2015

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Why Data Breach and Cyber Liability

- Data Breach and Cyber Liability a Hot Topic
 - Every business or professional organization stores vast amounts of consumer and other business information digitally.
 - Information is vulnerable to breaches, and compromises privacy.
 - The number of publicized breaches continues to grow, and we see stories in the news constantly regarding the serious fall outs from data breaches.
 - Being prepared in the event of a breach is vitally important to bounce back from the breach, and/or defend against potential liability.





What we will discuss today

- Current Business Trends involving Personal Identifiable Information (PII)
- What is PII?
- How Can Data Security be Breached?
- The Danger of PII Being Compromised
- Data Breach Lawsuits
- Plaintiffs' Attorney's Strategy/Causes of Action





What we will discuss today...

- Successful Theories of Defense
- Current State of Case Law/Precedent
- What can we Learn from the Current Case Law/Precedent
- · What can we Anticipate moving Forward
- Resources
- Questions and Answers





What is PII?

- Definition of Personally Identifying Information
 - Any information which can be used to distinguish or trace a natural person's identity
 - Including but not limited to financial and/or health information
 - Which is linked or linkable to a specific natural person.



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How can data security be breached?

- Hackers
- Internally
- Accidentally

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The danger of PII being compromised

- Bad Press/Future Impact on Business
- Costs of Correction
- Costs of Litigation
- Potentially Large Settlement/Judgment Values





Data breach in the news...

- Home Depot 56 Million Credit Card Numbers
- Staples 1.16 Million Customer Payment Cards
- Target 40 Million Credit Card Numbers
- South Carolina Dept. of Revenue
- TRICARE Management Activity Largest HIPAA breach in history
- And most recently, AshleyMadison.com identifying all users on an "extramarital" dating site.





Plaintiffs' attorney's strategy/causes of action

- Individual Lawsuits or Class Actions
- Breach of Express/Implied Contract
- Breach of Fiduciary Duty
- Unjust Enrichment
- Negligence
- State Statutory Claims
- Federal Statutory Claims

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Most successful theories of defense

- Lack of Injury in Fact
- Challenge to the Class Certification



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Current state of case law/precedent

- Injury in Fact no Article III standing
 - Clapper v. Amnesty International, 133 S. Ct. 1138 (2013)
 - Harris v. comScore, Inc., 825 F.Supp.2d 924 (N.D. III. 2011)
 - In Re: Google Inc. Cookie Placement Consumer Privacy Litigation, 988 F.Supp.2d 434 (USDC Del. 2013)
 - In re Barnes & Noble Pin Pad Litigation, No. 12-cv-8617 (N.D. III. 2013)



Current state of case law/precedent

- Injury in Fact Found!!
 - Krottner v. Starbucks, No. 09-35823 (9th Cir. 2010) Article III standing for "future harm", but not for Washington State Law
 - Resnick v. AvMed, Inc., 693 F.3d 1317 (11th Cir. 2012) Reversal of trial court finding no standing. Subsequently, this prompted a \$3 million dollar settlement.



Current state of case law/precedent

- Class Certification
 - Comcast Corporation, et al. v. Behrend, 133 S.Ct. 1426 (2013) individualized damages issue precludes certification of class
 - In re Hannaford Bros. Co. Customer Data Breach Security Breach Litigation, 293 F.R.D. 21 (USDC Maine 2013) – actual effect and mitigating steps taken by class members differed too much to be certified as class.





What can we learn from current case law/precedent?

- Defense attorneys have two strong arguments, arising early in litigation, to defeat data breach lawsuits.
- Challenges to Injury in Fact and Class Action could significantly devalue such cases, thus leading to a desirable result for your client.
- HOWEVER.....



What can we anticipate moving forward?

- Plaintiffs' Attorneys
 - Altered strategies to counter attack the negative precedent
- Legislature
 - New statutes and initiatives are out there that could strengthen and broaden the ability to bring litigation for Data Breach.
 - California Voters voting on "presumption of harm" in privacy breach cases.
 - Data Security and Data Breach Notification Act in front of the Senate
- Closely monitor your Jurisdiction to be aware of new developments.





Resources

- The Information Law Group
- Data Breach Today
- The Knowledge Group
- Professional Liability Defense Federation
- Burns White, LLC
 - Our own Cyber Security Group will continue to stay on top of the trends and developments and post periodic articles on the subject.

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Here are some ideal uses for our services:

- ✓ Market Research and Production
 - o List Research (Prospects, Clients, Market Evaluation, Sales Lists, Surveys)
 - o Design of Electronic Marketing Collateral
 - Executing Online Marketing Campaigns (Direct Email, PR Campaigns)
 - o Website Design
 - Social Media
- ✓ Analysis & Research
 - Research Companies & Produce Reports
 - o Research for Cases
 - Specialized Research Projects
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 - eSales Campaigns
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 - Electronic Database Building Comprehensive service which includes development of sales leads, contacting clients, scoring leads, adding notes and transferring the entire data set to you for your internal sales reps.
- ✓ eCustomer Service (Electronic Inside Sales Email and Online)
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 - Online Chat
 - Email
 - Follow-Up Customer Service
 - Responds to emails
 - Conducts Research
 - Replies Back to Your Customer

Please note these are just a few ways our experts can help with your Business Process Outsourcing needs. If you have a project not specifically listed above please contact us to see if we can help.



Introduction

Caroline has 15 years of experience in counseling and providing legal services to technology start-up companies, both as inhouse and outside counsel. Caroline has spent a majority of her time as in-house counsel focused on developing privacy and security infrastructure. Caroline received her JD from New York University School of Law, is admitted to both the CA and NY bars and is a Certified Information Privacy Professional (CIPP/US).

SEGMENT 2:



Caroline McCaffery General Counsel, Chief Privacy Officer Clarifai, Inc.



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FISMA – Federal Agencies

- Oversight Body
- Risk Assessments, Development of Policies and Procedures (incl. periodic tests and evaluations), Training
- Annual reports
- Annual independent evaluations
- Information security incident center
- Data breach reporting

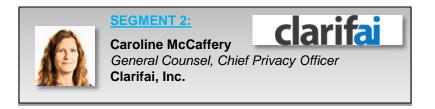


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FISMA – How can it apply to the Private Sector?

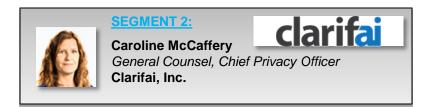
- Oversight Committee Who oversees?
 - Executives or management?
 - Executives have decision-making authority
 - May not have the time
 - Management
 - · Needs to feel empowered
 - Closer to the product and people





- Risk assessments, policies and procedures, training
 - Privacy impact assessments
 - Internal privacy policy
 - External privacy policy
 - Incident response plan
 - Videos, presentations, internal communications network (like slack, email, trello, etc.), new hire orientation





Annual Reports - What Kind?

– Transparency report – public

🏏 / Transparency Report -	Search Q	English - Sign in
Transparency	Report	
Communicate fearlessly to	build trust	
Google Transparency Report		g +
Access to information		
Data that sheds light on how laws and policies affect Internet users and the flow of information online.		

Internal reporting

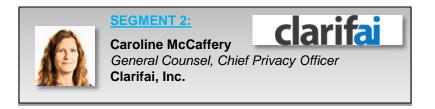


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Annual Independent Evaluations

- What kinds?
 - SOC2 Type 2 audits
 - Security assessments
 - Penetration testing
- Cost?
 - In \$\$
 - In Time
 - In Lost Opportunity





- Information Security Incident Center aka Security Committee
 - Composition
 - IT
 - Legal
 - People
 - Marketing
 - Engineering
 - Information Security
 - Privacy
 - Agenda
 - Foster communication between the people who will catch, evaluate, respond and remediate an incident

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- Data Breach Reporting
 - Internally
 - How it occurred
 - · How many individuals were affected
 - · Assessment of risk to individuals
 - · When to notify the affected individuals
 - Externally, how do you communicate an incident?
 - Email
 - Physical letter





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At last he had found the Regulatory Guidelines.

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Cybersecurity Enhancement Act of 2014

- Private/ Public Sector Collaboration
 - Purpose is to keep up with private sector expertise, best practices to reduce cyber risks to critical infrastructure

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Caroline McCaffery



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Executive Order – Promoting Private Sector Cybersecurity Information Sharing

- ISAC Sector specific
- ISAO Non-sector specific, tasked with creating best practices for all industry groups
 - Participants can have their information treated as protected critical infrastructure information an exempt from FOIA or state sunshine laws
 - Any organization or individual can participate

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NIST Framework

- Identify
- Protect
- Detect
- Respond
- Recover

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Identify

- How do you Identify?
 - Meet the members of the team
 - What products are you selling?
 - What internal systems are used?
 - What external systems are used?



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Protect

- From what?
 - Employees? Contractors? access controls & training
 - Outside attackers? firewalls, monitoring, third party audits



2014 Confirmed Data Breaches

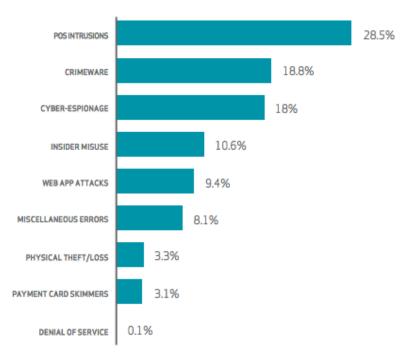


Figure 25.

Frequency of incident classification patterns with confirmed data breaches

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Verizon 2015 Data Breach Investigations Report

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Protect

- How?
 - Encryption
 - BYOD security & the remote worker
 - Cameras
 - Background checks
 - Firewalls

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Detect

- Monitoring ٠
- Auditing ٠
 - Who? _
 - How Often? _
 - Redundancy
 - Tools to help (like pagerduty)

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Respond

- Incident Response Plan
 - If you do not have an incident response plan, put one together
 - Need to determine the response team and their ability to make decisions (unanimous? majority?)
 - Proactively prepare some public responses, email, newsletter, blog posts, social media



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Recover

- Learn from Mistakes
- Adjust Policies
- Continue to communicate with affected individuals
- Be Humble!

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Data Breaches

- State Law
 - 47 States have enacted Breach notification laws
 - Who gains?
 - Lawyers?
 - States?
 - Who suffers?
 - Breached business
 - Affected individual



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Federal Breach Notification

- Data Security Act of 2015 https://www.congress.gov/bill/114th-congress/house-bill/2205/text
 - Introduced on 5/1/2015
 - Preempts State Law
 - FTC authority

Q&A:



SEGMENT 1:

Stuart T. O'Neal Trial Attorney and Litigator Burns and White





Caroline McCaffery General Counsel, Ch clarifai

General Counsel, Chief Privacy Officer Clarifai, Inc.

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