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ALM Virtual Corporate Counsel
Managing Cybersecurity Risks and Mitigating Data Breach Damage

VENABLE LLP Attorneys at Law

Washington, DC/New York/San Francisco/Los Angeles/Baltimore/Virginia/Delaware

November 6, 2014

ALM Virtual Corporate Counsel

Panelists for Managing Cybersecurity Risks and Mitigating Data Breach Damage

Jamie Barnett
Partner
Venable LLP
Rear Admiral USN

Co-Chair,
Telecommunications

Milo Cividanes
Partner
Venable LLP
Co-Chair Privacy and Data Security Practice

Ari Schwartz
Senior Director
Cybersecurity
United States National Security Council

David Strickland
Partner, Venable LLP
Former Administrator of the National Highway Traffic and Safety Administration (NHTSA)

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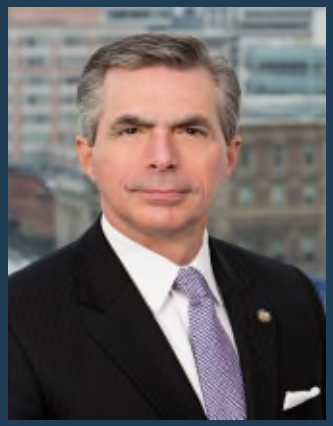

Jamie Barnett
Rear Admiral USN (Retired)
Co-Chair Telecom

Agenda

Welcome and Introduction of Speakers
Jamie Barnett

Overview of Cybersecurity Liability and Risks
Jamie Barnett

Risk Mitigation for Data Security and Privacy
Milo Cividanes

Sector Case Study: Automotive Connectivity Risk Mitigation
David Strickland

How Does This Affect Me?
Jamie Barnett

How Adoption of the Cybersecurity Framework Will Affect You
Special Guest: Ari Schwartz

Discussion, Questions and Answers

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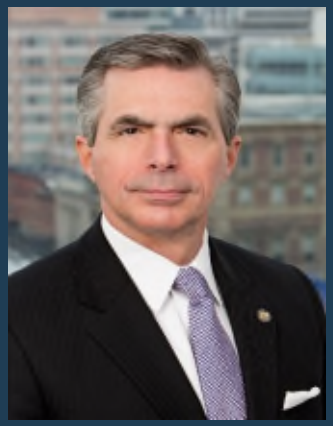

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Liability from Cyber Attacks

- Depending on the type of attack, victims may be subject to:
  - Third-party liability:
    - Claims alleging negligence
    - Contract claims
    - Shareholder suits
    - Enforcement actions
  - First-person liability:
    - Business losses
    - Loss of share value
    - Remediation costs (identity protection, card replacements, PR expenses, etc.)

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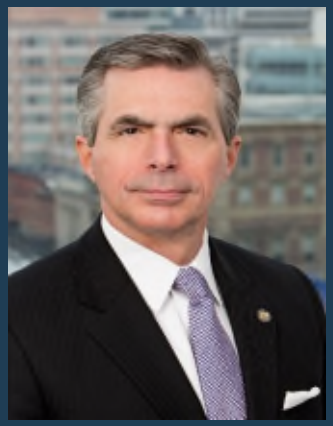

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Is There a Cyber Standard of Care?

- Some courts have indicated willingness to hold cyber victims liable to consumers for breaches where security practices were not reasonable
  - Obstacles do still exist, e.g. legal standing and "economic loss" rule
- FTC unfairness-based enforcement actions can serve as indicators of unreasonable practices
- The NIST Framework is being closely scrutinized to see if it becomes the "gold standard" for all companies
  - *See, e.g., Shames-Yeakel v. Citizens Financial Bank*, 677 F.Supp.2d 994, 994 (N.D. Ill. 2009).
  - At least one court dealing with a data breach lawsuit determined that failure to use "industry-standard encryption" was grounds for allegation of failure to provide reasonable data security measures
  - Recent PWC report found 29% of respondents had already implemented NIST CF and 25% said adoption was a future priority

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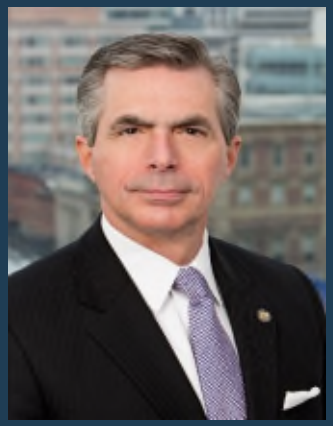

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Is There a Cyber Standard of Care?

Cybersecurity Framework does not provide a safe harbor, but adoption could provide evidence of diligence and care to follow best practices

Kelly Welsh, General Counsel Department of Commerce

(to Chamber of Commerce and ITIC)

Cybersecurity Framework may be a defense to liability suits

Toward a Global Cybersecurity Standard of Care? Exploring the Implications of the 2014 NIST Cybersecurity Framework on Shaping Reasonable National and International Cybersecurity Practices

TEX. INT'L L.J., forthcoming (2015)
Scott Shackleford et al.

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Milo Cividanes
Co-Chair Privacy and Data Breach

Risks to Data Security and Privacy

- Three Elements of an Attack:
  - Source
  - Target
  - Impact

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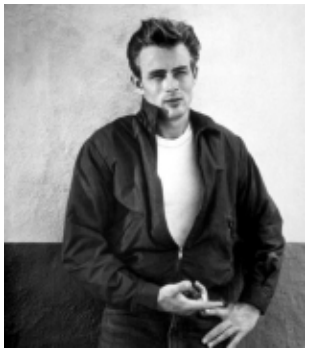
Co-Chair Privacy and Data Breach

Source: Four Horsemen of the “Cybocalypse”



Rogue/Disgruntled

“Hacktivist”

Advanced Persistent Threat

Organized Crime

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Target

- Financial data
  - PII
  - Payment card data
  - Identifying data
- Intelligence
  - IP
  - Attorney-Client
  - R&D
  - Military Secrets
- Other
  - Destruction/disruption/leaks

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Impact

- Direct Financial Costs
- Reputational Damage
- Government Fines/Regulatory Oversight
- Class Actions

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Co-Chair Privacy and Data Breach

Risk Mitigation for Data Security and Privacy

- Elevating
  - Boardroom responsibility; Enterprise-wide approach
- Understanding
  - Identify data assets
  - Review organizational governance
- Securing
  - Vendor controls
  - Penetration testing and other measures
  - Incident Response Plan

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David L. Strickland
Partner & Former Administrator of NHTSA, Department of Transportation

Automotive Connectivity Landscape

- Past 10 years
  - Navigation
  - Telecommunication integration
- Where we are today
  - Advanced telematics
  - Crash avoidance technologies
- On the horizon
  - Connected vehicles
  - Self-driving

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Automotive Connectivity Risk Vectors

- Streaming services and customization
- Remote access via mobile apps
- V2I (vehicle to infrastructure)
- V2V (vehicle to vehicle)

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Impact Potential

- Physical harms
  - Personal injury
  - Property damage
- Data security and confidentiality
  - Theft of PII and location data
  - Identity theft
- Data integrity loss
  - Product reliability
  - Data accuracy

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Automotive Connectivity Risk Mitigation

- Industry self-regulation
- Automotive Information Sharing and Analysis Center (ISAC)
- Drive cybersecurity requirements throughout the supply chain
- Potential new regulations for software and electronic systems

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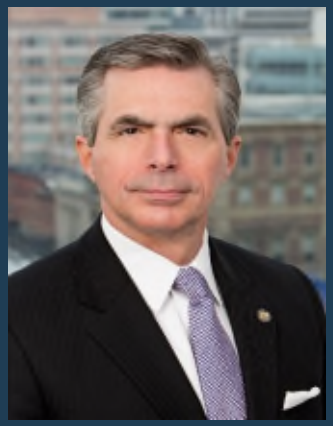

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How Does This Affect Me?

What Should I Do About It?

- Perform a self-assessment and gap analysis to identify areas needing improvement prior to approaching insurers
- Develop and regularly test a cybersecurity incident response plan
- Hire outside consultants to provide objective vulnerability assessments
- Hire outside counsel first, and have them engage all other contractors and conduct all internal investigations to ensure attorney-client privilege

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How Adoption of the Cybersecurity Framework Will Affect You And the Cybersecurity Road Ahead

Ari Schwartz
Senior Director,
Cybersecurity,
National Security Council

Ari M. Schwartz is the Senior Director for Cybersecurity on the U.S. National Security Council Staff at the White House

Former Director for Cybersecurity, Privacy, Civil Liberties and Policy at the White House

Former Senior Advisor for technology policy for the U.S. Secretary of Commerce

Former Internet Policy Advisor at the National Institute of Standards and Technology

Former Vice President and Chief Operating Officer for the Center for Democracy & Technology (CDT) and served as Deputy Director

Received the RSA Conference Award for Excellence in Public Policy and the Online Trust Alliance Award for Excellence in Public Policy

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Discussion, Questions and Answers

Ari Schwartz
Senior Director,
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White House

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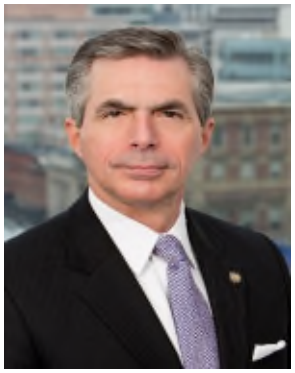

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