



# **CYBER, TECHNOLOGY AND SOCIAL MEDIA**

## **GROUP CHAIRS**



John J. Jablonski

Companies of all sizes, both in the United States and abroad, have experienced cyber security issues. These issues involve inadvertent data loss, as well as criminal cyber-attacks with hazards including data breaches and ransomware. The scope of cyber security is broad and far-reaching. We advise clients on numerous risks arising from cyber and privacy. These include data loss claims, data restoration, credit monitoring, notification, and coverage for data breaches. Our Cyber, Technology and Social Media Practice Group includes legal innovators who are nationally and internationally recognized in these areas. Our lawyers addressing these issues understand information management and risk management. We marry this team with our deep experience of all of our other practice groups including Professional Liability, Commercial and Corporate, Employment and Insurance Solutions. This holistic approach is what brings success in managing the exposures associated with social media, cloud-based platforms, data use and data storage.

## **APPELLATE ADVOCACY**

The appellate outcome of cyber, technology and social media based matters is equally important to the outcome of a trial or lower court proceeding. Appeals often have precedent setting significance with impact far beyond a single matter. Success at the appellate level requires different skills than those applied at trial. It is important to understand the appellate bench, and the perfection of the record.

Our lawyers' analytical, writing, and oral advocacy skills are honed for success on appeal. Our lawyers have served as judicial law clerks to trial and appellate court judges, providing insight into the working of the priorities and decision-making of the bench.

Our Cyber, Technology and Social Media Practice Group works closely with our Appellate Practice Group – teaming together to often parachute into matters handled by separate trial counsel. We are regularly sought in this regard to serve as appellate monitoring counsel during trial. Clients also engage us to write amicus curiae briefs, and to work with other trial counsel to ensure that

these matters are properly postured for appeal.

## **CLASS ACTION DEFENSE**

Achieving success in cyber, technology or social media based class action matters requires strategy for early dismissal, defeating class certification, Rule 23(f) appeals of class certification decisions, and precluding plaintiffs' expert witnesses. This strategy must work backwards from the desired result to be successful. We understand the constantly evolving standards for class certification in this arena. We have been able to convince parties and courts that certification must be denied. In this regard, we understand that class actions can often be favorably resolved with a comprehensive and irrevocable settlement. Often, carefully negotiated settlements of class actions are true "wins" in that they avoid years of litigation cost, uncertain risk and potential reputational harm. We also recognize the need for coordinated strategy against the setting of regulatory inquiry, government action, or criminal prosecutions. Our team comprehends that a major lawsuit and media exposure can be distressing and can adversely impact public perception and future revenues. We work with our clients from day one to mitigate brand and reputational harm.

## **CYBER RISK AVOIDANCE AND DEFENSE**

Our team understands data breaches are rising each year at an alarming rate. Every day there seems to be a new story about another ransomware attack or large data breach. We provide prophylactic advice targeted at limiting exposure from a cyber event. We work in partnership with our clients to limit liability from data breach, unauthorized or inadvertent disclosure of private or proprietary information, infection by a computer virus or malicious code, claims of intellectual property infringement, or claims of cyber-related defamation or libel. We also counsel on compliance with the evolving regulatory requirements placed on companies in various industries to protect their networks and data, such as the Gramm-Leach-Bliley Act and the Health Insurance Portability and Accountability Act (HIPAA), along with the disclosure guidelines imposed by the Securities and Exchange Commission.

In the event of a data breach, theft or loss of information, social media-related allegation, or other occurrence, our team is well equipped to guide clients through their response. This includes handling dispute resolution and litigation, managing the crisis to minimize reputational harm, and responding to regulatory agencies.

## **E-DISCOVERY**

Our lawyers advise our clients at risk for cyber, technology and social media based claims in developing pre-litigation policies and procedures. We counsel clients on implementing effective technologies to manage and dispose of data defensibly and consistently with emerging best practices. Our team also advises on preserving documents and data effectively where there is a duty to preserve. We work with clients to explain defensible disposal before a duty to preserve arises. Once a duty to preserve arises, we work hand-in-glove with clients on legal holds and their scope. Our managing partner, John Jablonski, is nationally recognized in this arena. He is the Editor of Arkfield's Best Practices Guide for Legal Holds, and the former chair of the Defense Research Institute's E-Discovery Committee.

Our commitment to innovation and technology allows us to provide a distinct competitive advantage for our clients. We recognize the potentially crippling costs of discovery, particularly e-discovery, in major litigation and are committed to employing creative, cost-saving solutions that will maximize value to our clients without compromising excellence. While many firms have made a decision to create in-house operations with costly overhead from space, full-time staff, and benefits, we have created key vendor relationships that effectively act as if they are "in-house" but bear their own overhead. This way we effectively manage our client costs. We require

efficiency, value, responsiveness, and quality of these vendors.

## **INTERNET OF THINGS AND DISRUPTIVE TECHNOLOGY**

From home monitoring systems to the Amazon Echo, new technologies are changing the way we live and work. Driving and health habits can be monitored in real time. Dash cams and live feeds bring real-time capture of events. Nanotechnology is ever evolving and shaping industries from retail to pharmaceutical. Our lawyers stay abreast of these issues and apply their knowledge to assisting all practices.

## **INSURANCE COVERAGE**

While cyber insurance policies are popular, evaluating policy language carefully is key in any loss. For example, a loss involving an employee tricked into wiring money into the wrong bank accounts may not be covered. Policies often excluded coverage for losses caused, even in part, by an authorized user's entry of electronic data into the company's computer system. Many policies define a "Privacy Injury" as an injury suffered by a person whose information has been compromised. As a result, there may be no Privacy Injury, and no coverage if an insured reimburses a third party for fraud claims.

Several cyber insurance policies have "first-party cyber" coverage, but relatively few companies purchase the coverage because of the long waiting period, inability to address outsourcing and offshoring, and the narrow causes of loss. Our lawyers understand the many different forms of cyber coverage and have handled matters addressing the scope of cyber cover.

Our Cyber, Technology and Social Media lawyers who focus on cyber and technology insurance issues work closely with team members in Insurance Solutions and Professional Liability and Practice Groups.

## **LIABILITY AUDITS**

Our team has extensive experience advising businesses, insurers and reinsurers on the wide range of exposures that are emerging to cover growing cyber risks. To help minimize the risk of a potentially costly dispute, we review, draft, and modify cyber liability procedures and guidelines; develop applications and underwriting guidelines specifically tailored to cyber risk; and effectively negotiate contracts, policies and treaties. We are especially adept at advising insurers on the use of social media in claims investigation, which, if not handled properly, can be a legal minefield for insurers.

## **SOCIAL MEDIA COUNSELING**

Our team members are recognized as innovators and authorities in the use of social media. We speak on this topic regularly around the globe. In short, we get social media — therefore, we understand how it impacts a client's business.

We routinely advise businesses and professionals on limiting the exposure arising social media. We also counsel on the use of social media as a appropriate tool to enhance brand and achieve marketing goals. We have counseled some of the largest insurers in the world on these issues.

We can assist with the full range of social media concerns, including:

- Social media training for executives and their employees
- Legal audits of corporate and employee social media use
- Minimizing corporate liability and defamation risk
- Advising on the scope and appropriate use of social media in claims investigation
- Developing and advising on corporate social media policies

- Avoiding or handling employment-related disputes
- Advertisements, contests, and promoting with social media