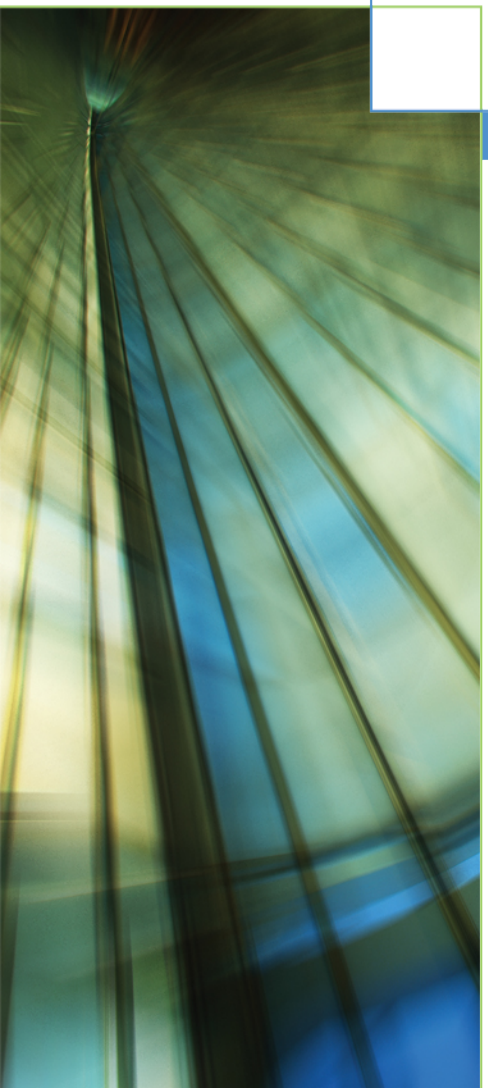
SILA FOUNDATION

Webinar: Cyber Security and Privacy

Thursday, Oct. 26 @ 3:00pm EST



Cybersecurity: Are You Prepared to Respond and Defend?

SILA Foundation Webinar October 26 , 2017

Lori Nugent
Shareholder
Cybersecurity, Privacy and Crisis Management

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- Past the Tipping Point
- Responding Well Matters
- Are You Prepared Financially?
- Who Needs a Seat at the Table?
- What are Your Proof Points?
- Breach Scenarios to Consider

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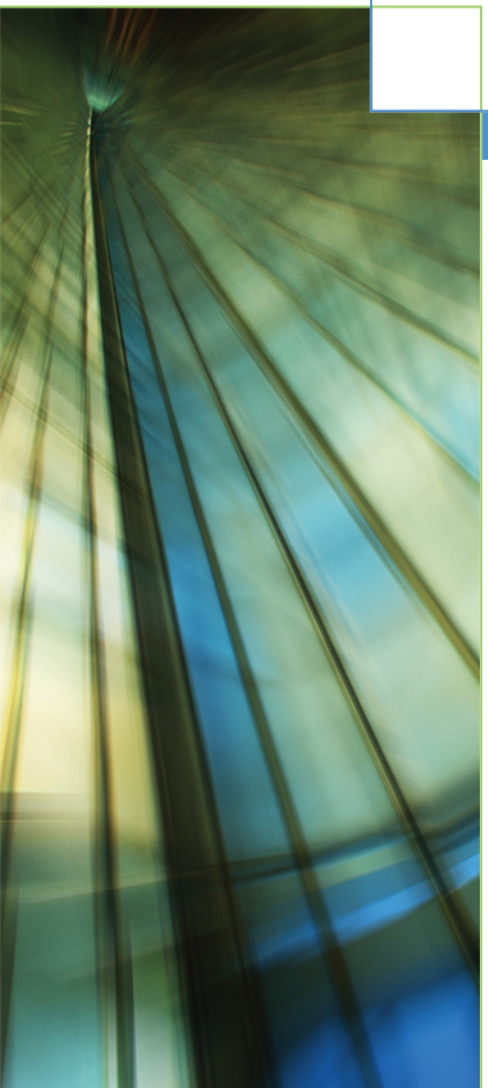

Past the Tipping Point

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Cyber Crime is Big Business

- Cyber Crime is the FBI's #3 Priority
  - Behind Terrorism and Espionage
- Top Hackers Subcontract
- Regulators "Help" Companies Understand that Cyber Threats Require Attention

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Disclosure Obligations

- Breach Notification Laws
  - 48 states (not South Dakota or Alabama) and D.C., Guam, Puerto Rico and USVI
  - Federal Regulations
  - Global Regulations (e.g. GDPR, Macao)

- Contractual Breach Notification Obligations
  - Vendor Management Contract Terms
  - Loan Covenant(s) and Other Private Agreements

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Regulatory Hot Tin Roof

- Federal Agencies After OPM Breach
- State Regulator Coordination
  - Winning Since TJX Breach
    2009 Settlement by 41 AGs for $9.75 Million
- International Regulators' Scrutiny
  - Post-Snowden Mistrust
  - Different Values and Approaches
- **Regulators are Cash Positive**

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Which Regulator is Most Aggressive?

- SEC
  - Sweeps
- FTC
  - Consent Decrees with Audits for 20 Years
- HHS
  - Hospice of Northern Idaho
- EU General Data Protection Regulation (GDPR)
  - Up to €20 Million or 4% of Annual Global Turnover
- State Attorneys General

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State Regulators: Setting National Trends

- **California**
  - 2003 First Data Breach Notification Law
  - 2016 CA AG Adopted Center for Internet Security (CIS) Critical Security Controls
    Failure to Implement = “Lack of Reasonable Security”
- **Massachusetts**
  - 2007 Standards for Protection of Personal Information
    Requires encryption

New York

- 2017 Financial Services Regulation requires annual compliance certification, and breach notice within 72 hours

New York Department of Financial Services
Cyber Regulation and Enforcement

$2,500 potential fine per violation, per day the violation continues

$15,000 potential fine per violation, per day the violation continues for any reckless or unsound practice or pattern of misconduct

$75,000 potential fine per violation, per day the violation continues for a knowing and willful violation

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Litigation Floodgates Opening

- **Standing:**

  Threatened Injury Certainly Impending and Fairly Traceable to Defendant

- **Sony:**
  - Wrongful Disclosure Causing Threat of Future Harm is Enough—No 3d Party Access Required

- **Neiman Marcus:**
  - Data Theft Necessarily Implies Imminent Threat of Harm Because Misuse of Data is the Purpose of a Breach

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Class Action Standing

- *Neiman Marcus:*

"At this stage in the litigation it is plausible to infer that plaintiffs have shown a substantial risk of harm from the Neiman Marcus data breach. Why else would hackers break into a store's database and steal consumers' private information? Presumably, the purpose of the hack is, sooner or later, to make fraudulent charges or assume those consumers' identities."

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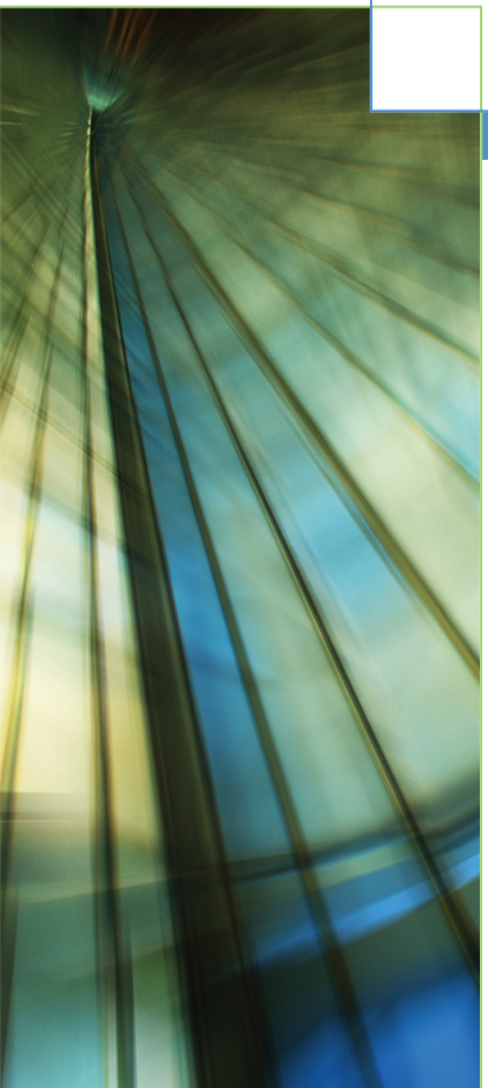
Data Breach Class Action Claims:

- Negligence
- Breach of Contract
- Fraud
- Unfair Trade Practices/Consumer Protection
- Directors and Officers' Liability for Breach of Fiduciary Duty

Prepare for Defense on the Merits



Responding Well Matters

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Responding Well Matters:

- Response Sets that Tone for:
  - Public Perception
  - Regulatory Investigation
  - Litigation
- Prepare to Act Quickly and Prudently to Protect:
  - Customers/Consumers
  - Shareholders and other Stakeholders
  - Brand
  - Cash Flow

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What do Regulators Expect?

- Proof that Your Operation Isn't Careless, Including:

  - A Solid, Tested, Workable Breach Response Plan

  - Evidence that You:
    - Know What Sensitive Data You Handle,
    - Keep Only What it is Necessary, and
    - Take Reasonable Steps to Protect It

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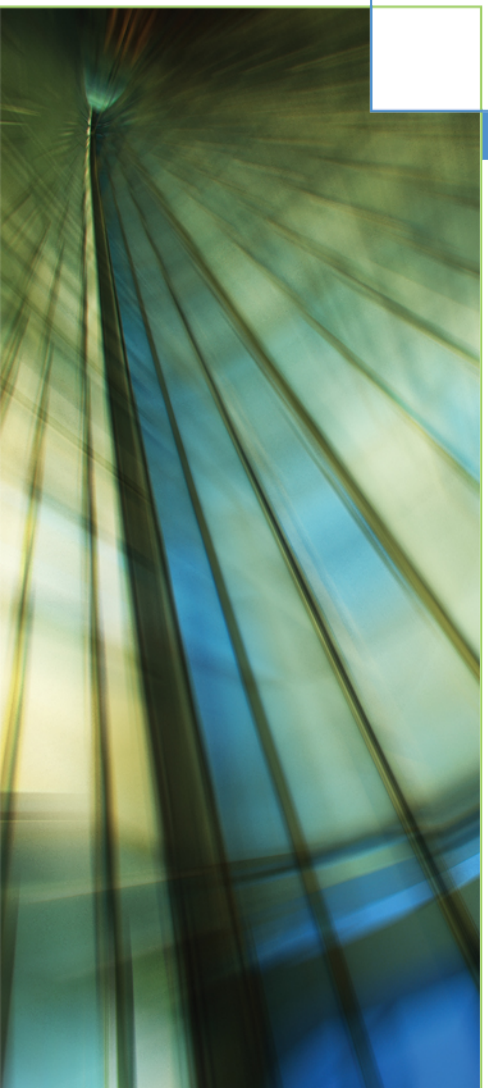
What do Regulators Expect?

- Timely Notification
- Quick, Accurate Count of the Number of Impacted Individuals Resident in Each Jurisdiction
- Clear, Fair Communication
- Services for Impacted Individuals



Are You Prepared Financially?

Average Cost of a Breach (2017)

- The average cost of a breach is $225/record
  - Not all records are created equal:
    - Health Care: $380/record
    - Financial: $336/record
    - Educational: $245/record
    - Retail: $177/record
- The average cost of a data breach in the USA is $7.35 million dollars

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Are You Prepared Financially?

- Do You Know Your Maximum Probable Loss and Likely Frequent Losses?
  - Maximum Probable Loss
    - $225- $380 Per Impacted Individual
    - More Robust Valuation Using Breach Calculators
  - Frequency Valuation
    - Evaluate Prior Situations
    - Consider Impact of Mobile Technology
    - Don’t Forget Insider Risks and Vendors

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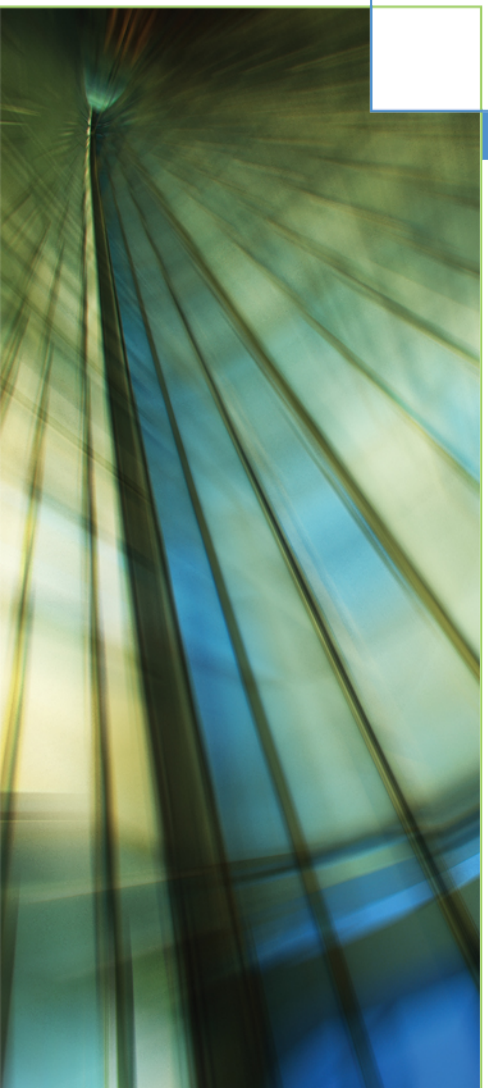
Are You Prepared Financially?

- Are Your Cyber Reserves/Insurance Adequate?
  - Evaluated Annually
  - Based on MPL and Frequency Assessment
  - Supported by Independent Evaluation (e.g. Broker)
- Are Your Vendors' Reserves/Insurance Adequate if They Cause Your Loss? And Others on their Platform?
- Are You Satisfied with Contractual Joint Breach Response Requirements and Planning?



Who Needs a Seat at the Table?

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Who Needs a Seat at the Table?

- Responding Well Requires an Enterprise-Level Plan
  - IT
  - Legal
  - Compliance
  - Finance
  - Risk Management
  - Human Resources
  - Public Relations
  - Each Operating Unit

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Strong Incident Response Plans Include

- Agreed Upon Authority and Roles
- Stakeholder Communication Plans
- Prudently Engaged Management and Board
- Trained Incident Response Team:
  - Reflects the Enterprise
  - Structured to Enhance Legal Protections
  - Includes Core Initial Investigation Team with Counsel
  - Preserves Evidence to Avoid Spoliation
  - Thoughtful Documentation

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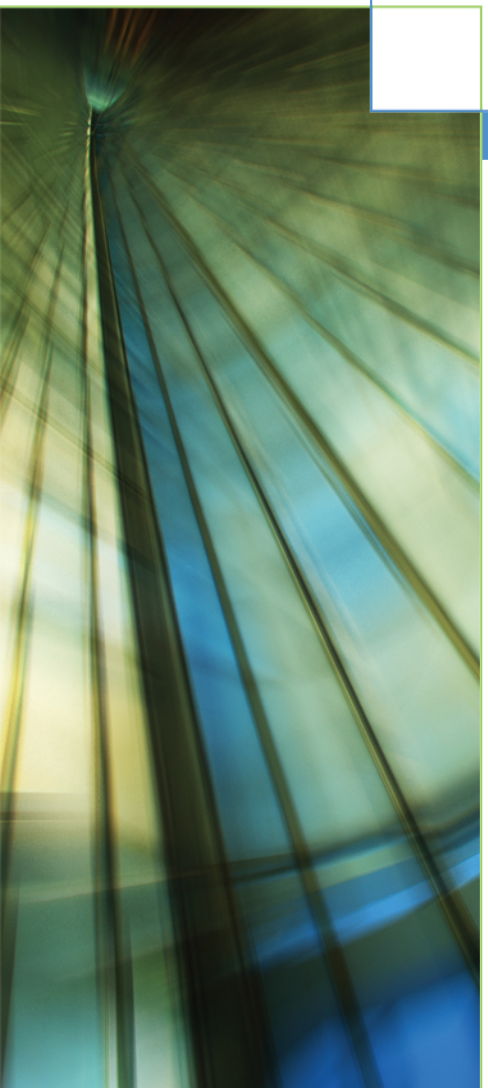
Preparing Incident Response Team Members

- Identify Individuals and Alternates
- Incident Response Team Members = Witnesses
- Choose Carefully and Confirm Readiness
- Train the Team
  - Know Who does What, When and Why
  - Agreed Upon Process and Authority
  - Method(s) for Keeping Stakeholders Informed
  - Appropriate Documentation

Preserve Evidence and Legal Protections while Avoiding Admissions



What are Your Proof Points?

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What Evidence Proves Your Reasonableness to:

- Customers
- Business Partners
- Regulators
- Plaintiffs' Attorneys
- Shareholders
- Public

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What are Your Proof Points?

- Defensible Positions
  - Maximize Legal Protection of Response
  - Preserve Evidence and Document Prudently
  - Strong Proof Points are Identified in Advance:
    - Active Management and Board Engagement
    - Reasonable Steps Taken to Minimize and Protect Sensitive Data Cradle to Grave
    - Appropriate Training and Testing
    - Independent Expert Validation of Good Practices
    - Key Documents and Witnesses are Ready

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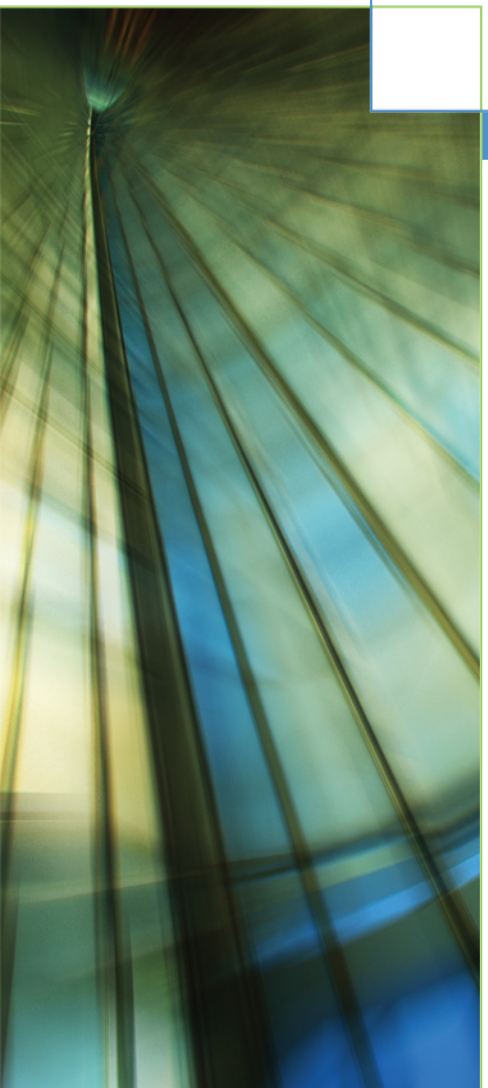

Breach Scenarios to Consider

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Breach Scenarios to Consider

- Employee Data Breach
- Vendor's Breach of Your Customer Data
- Ransomware
- Social Engineering Induced Fraud
- Insider Compromise

What are Your Proof Points?

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On the Horizon

- State AGs to continue aggressive regulatory actions
- Class action plaintiffs will benefit from regulatory activity
- Litigation costs and insurance premiums will increase as more courts find standing
- Malware and social engineering will continue to adapt to defensive efforts
- Continued nation-state and hactivist activity
- Legislative activity will continue to escalate
- Increasing complexity for cross-border data transfers

Questions?

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Thank You!

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