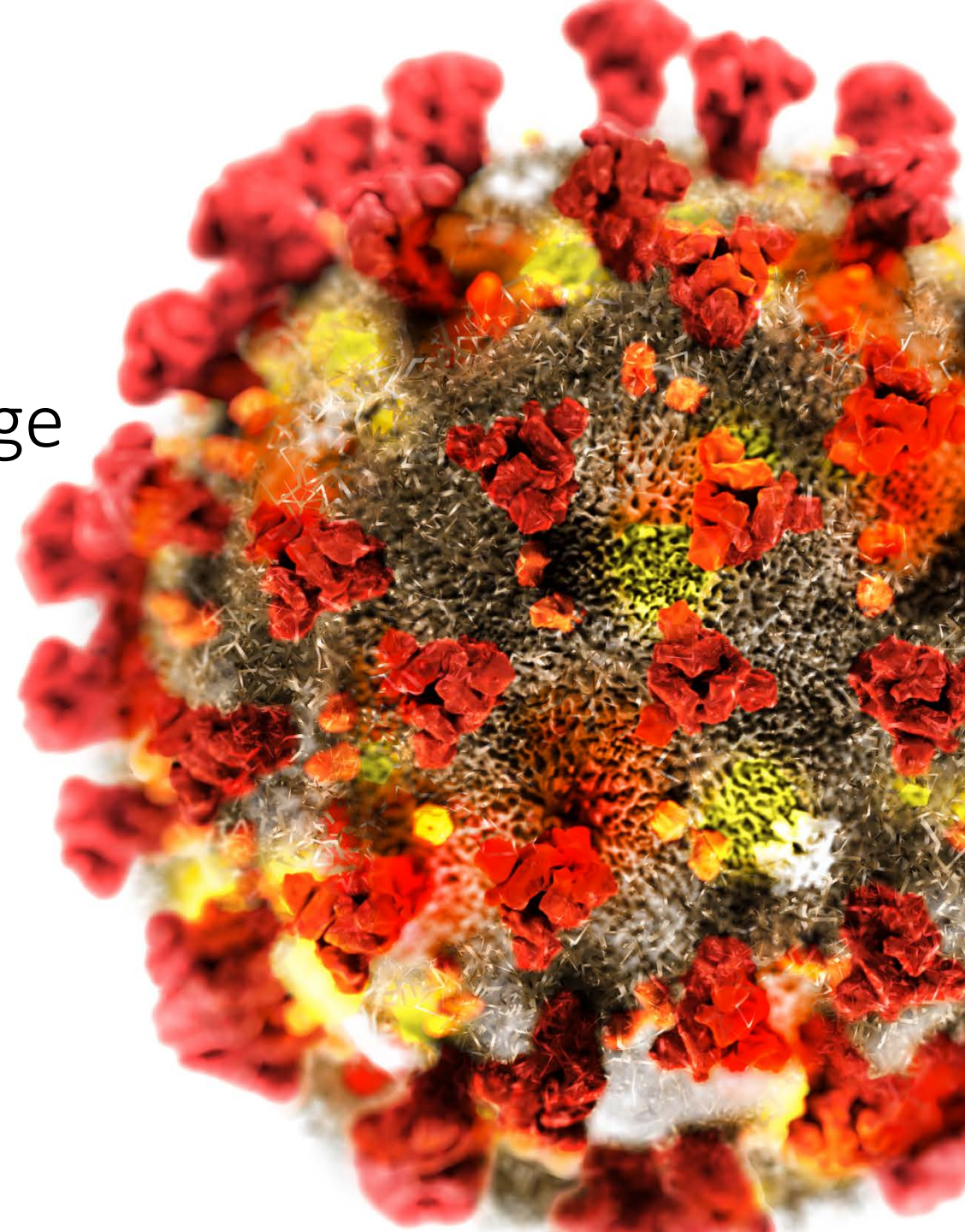


# COVID-19 (Coronavirus) Business Implications & Legal Triage

Protecting Your People & Your Business During a Global Pandemic



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Amanda Halter

Partner

# Presenters



**Amanda Halter**  
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Amanda Halter

Partner

“Toto, I have a feeling we are not in Kansas anymore....”

# The Coronavirus Pandemic So Far



Amanda Halter  
Partner  
Crisis Management

## Global Picture

- COVID-19 first reported in Wuhan, China (late December 2019)
- First reported U.S. case (January 2020)
- WHO declares global pandemic (March 11, 2020)
  - 118k cases
  - 4,000+ deaths worldwide
- Italy announces nationwide lockdown (March 9, 2020)

# The Coronavirus Pandemic So Far



**Amanda Halter**  
Partner  
Crisis Management

## U.S. Public Health Picture

- All 50 U.S. states have confirmed cases
  - W. Va. last to confirm Wednesday
- Fears of overwhelmed healthcare infrastructure grow
  - U.S. cases soar past 7,000

# The Coronavirus Pandemic So Far



**Amanda Halter**  
Partner  
Crisis Management

## U.S. and Global Public Health Response

- U.S. significantly behind in testing
  - March 18 aid legislation promises free testing for all
- Social distancing is the new normal
- European countries enact nationwide quarantine, tighten borders
- New tests being developed
  - University of Oxford reports 30-min. results
  - WHO organizing study to test various potential treatments



# The Coronavirus Pandemic: What Happened



**Amanda Halter**  
Partner  
Crisis Management

## **U.S. Government Response**

- Congress passes, President Trump signs federal relief package
  - Paid sick leave
  - Unemployment benefits
  - Free testing
  - Food & medical aid
- Defense Production Act invoked to address supply shortages

# The Coronavirus Pandemic So Far



**Amanda Halter**  
Partner  
Crisis Management

## U.S./World Market Status

- Markets sink to 3-year low
  - Dow closes below 20,000
  - S&P 500 triggers market-wide trading halt
  - Crude oil closes at lowest levels in nearly two decades
- Major retailers shutter:
  - Nike
  - Apple
  - Macy's

# The Coronavirus Pandemic So Far



**Amanda Halter**  
Partner  
Crisis Management

## Global Industry Impacts

- Big 3 automakers shut down U.S. plants
- Airline industry projected to lose \$113B
  - Delta to halt major operations, 70% reduction in capacity
- American Farm Bureau predicts labor shortages, supply impacts
- Hospitality industry projected to lose 45% of jobs

# Form Your Core Response Team

- Set goals
- Decides and coordinates major response activities
- Manages the fact-gathering and analysis
- Assesses the risks, balances the priorities
- Ensures proper reporting



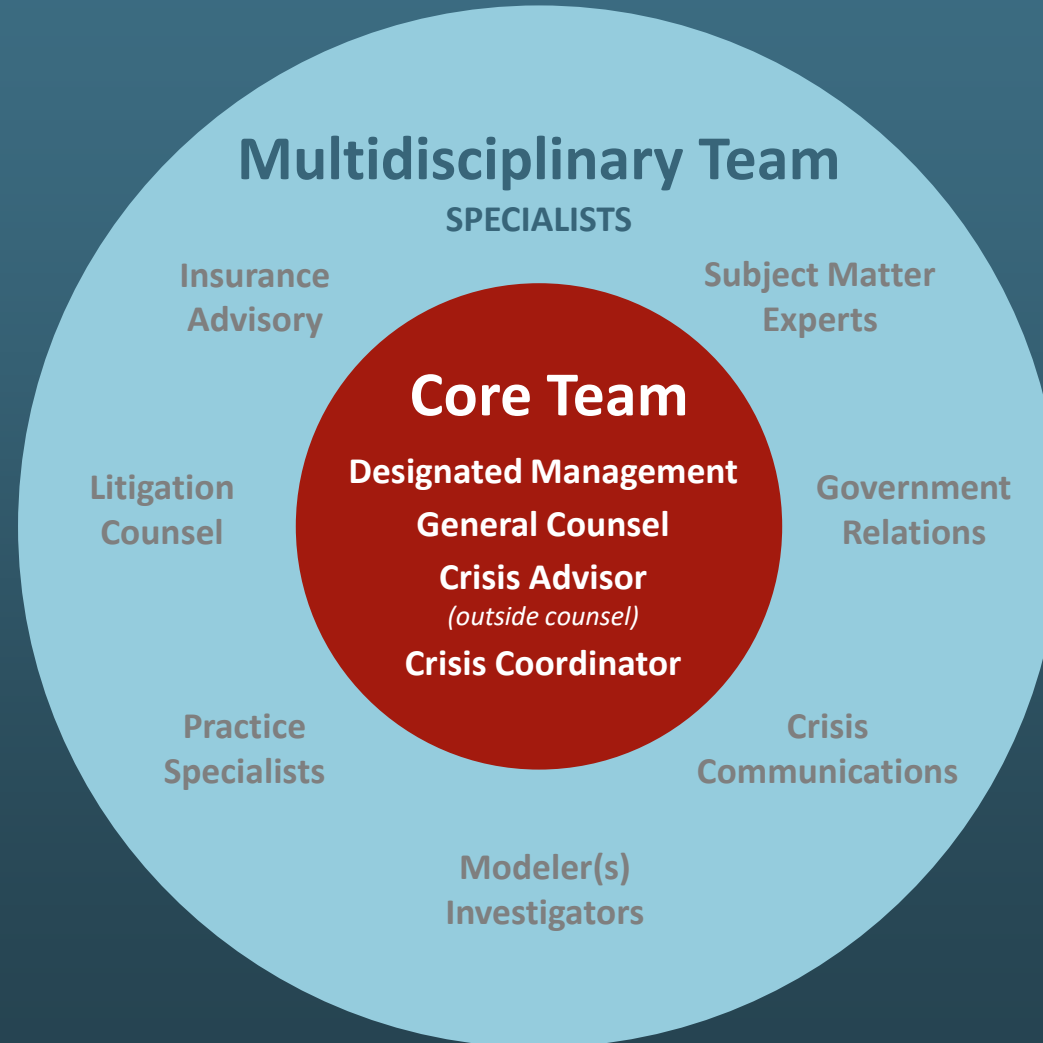
**Amanda Halter**  
Partner  
Crisis Management



# Assemble Your Team (Trusted Advisors)



**Amanda Halter**  
Partner  
Crisis Management



# Assign a Crisis Coordinator



**Amanda Halter**  
Partner  
Crisis Management

**The Crisis Coordinator assures maximum benefit from the multi-disciplinary team by:**

- Tracking and managing the many moving parts
- Facilitating communication among the specialists
- Connecting the dots and spotting issues

# Organize on a 24-Hour Clock



**Amanda Halter**  
Partner  
Crisis Management



# Iterative Crisis Management Loop



**Amanda Halter**  
Partner  
Crisis Management





# Establish Goals

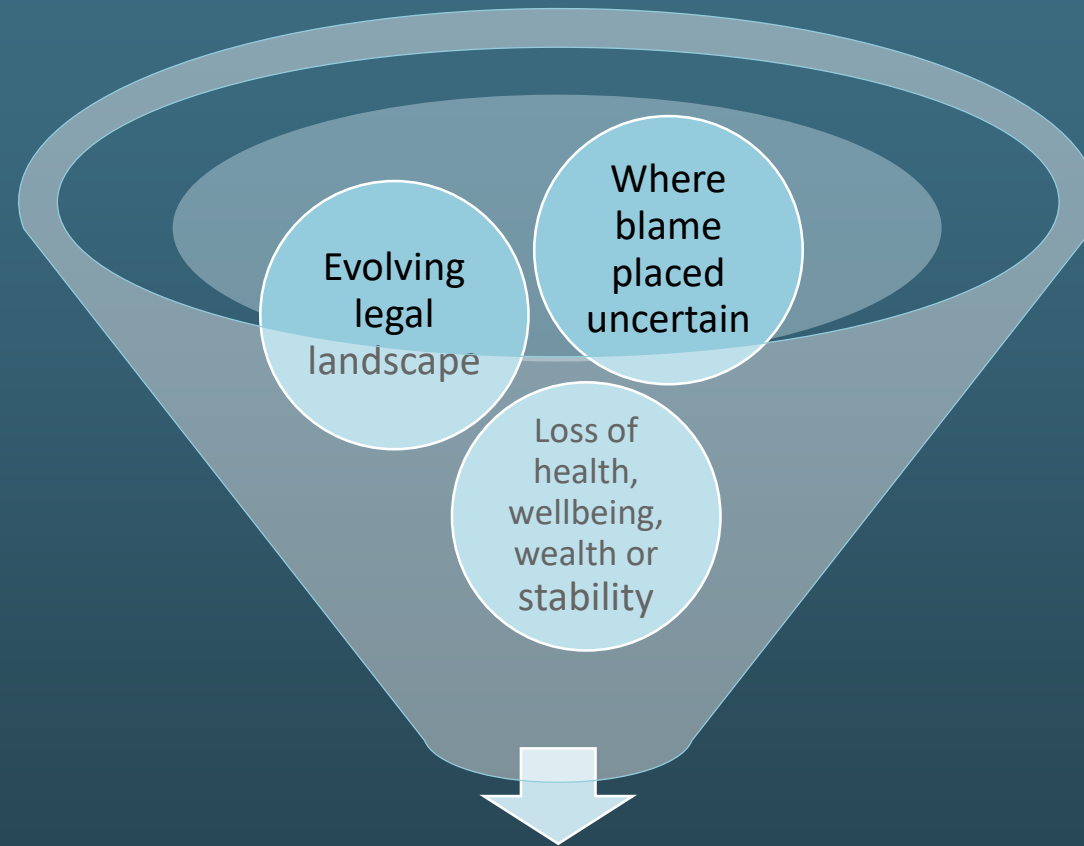


**Amanda Halter**  
Partner  
Crisis Management

## WHO DO WE WANT TO BE WHEN THIS IS OVER?

- Often an overlooked step
- Constantly revisit
- Decision-making becomes easier

# Protect Privilege



Crucial to Protect Legal Privileges



**Amanda Halter**  
Partner  
Crisis Management



# Protect Privilege

- Legal counsel in core team
- Legal reviews stakeholder communications
  - Even if not the norm
- Recurring call
  - Limit email



**Amanda Halter**  
Partner  
Crisis Management

# Communication is Everything



Amanda Halter  
Partner  
Crisis Management

- Integrate into iterative process
- Concise, consistent messaging
- Tailor to stakeholder group
- Most effective communication mechanism (may be different among stakeholders)
- Designate someone to liaise with media, field all requests



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Mario Dottori  
Partner



Rob James  
Partner

# Supply Chain COVID-19 Impacts

## Overview and Approach

- Assess your place in the entire supply chain
- Identify the stressors up and down the links
- Be aware of the doctrines *behind* your contracts
  - Applicable law can be dispositive
  - Impracticability of performance (RS2d 261, UCC 2-615)
  - Frustration of purpose (RS2d 265)
  - What was the bargain? How did the parties allocate risk?



**Rob James**

Partner

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**Mario Dottori**

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Global Sourcing

# Supply Chain COVID-19 Impacts

## Force Majeure: *Scope*

- Core: excuse for prevented or delayed performance
- Breadth—economics, hardship?
- Covered events
  - Epidemics, quarantines
  - Acts or orders of government authority
  - Any [other] event beyond party's control
  - Unforeseeability: enumeration can make a difference



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# Supply Chain COVID-19 Impacts



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## **Force Majeure: *Getting Prepared***

- Assess your needs now (deliberate speed)
  - Assemble team (Production, Delivery, Risk, IT, Finance, Comms, Legal)
  - Triage priorities:
    - Level 1: Immediate attention - heightened risk / financial impact
    - Level 2: Likely next wave - emerging threats
- Set Strategy (be agile)
  - Set high level plan
  - Build in contingencies, fallbacks and alternatives
  - Is it scalable or for a single exposure or risk?



**Mario Dottori**

Partner

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# Supply Chain COVID-19 Impacts

## Force Majeure: *Developing the Game Plan*

- Contract terms (checklist)
  - Content and timeliness of notice
  - Duty to mitigate, resume performance,
  - Duty to make up lost performance
  - Priority / allocation of performance across customers
  - Third party cover / cost of cover
  - Termination risks and rights
  - Indemnity protection and exposure



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# Supply Chain COVID-19 Impacts

## Force Majeure: *Developing the Game Plan (cont'd)*

- Disaster recovery and business continuity
  - Compliance and mitigation of impact
  - Alignment of upstream and downstream supply chain partners
  - Security landscape
    - Work from home and related cybersecurity concerns



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# Supply Chain COVID-19 Impacts

## Force Majeure: *Executing the Game Plan*

- Staggered posture, if feasible
  - Plan A - Business accommodation – no Force Majeure claim
  - Plan B - Force Majeure Claim – Plan A is not feasible or is rejected
- Communication plan
  - Align and tailor comms
    - Customers / downstream supply chain / internal stakeholders
  - B2B – relationship outreach
  - Legal – formal notice, when needed



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# Supply Chain COVID-19 Impacts

## Force Majeure: *Executing the Game Plan*

- Alternative notices at the ready
  - Prepare alternative notices (Plans A & B)
  - Consider “templatizing” (across impacted customers/supply chain)
  - Be prepared to send immediately



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Global Sourcing

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Brian Finch

Partner





## PRESS RELEASE

United States Secret Service  
Department of Homeland Security

### Secret Service Issues COVID-19 (Coronavirus) Phishing Alerts

WASHINGTON - Criminals are opportunists, and as seen in the past, any major news event provides a window of opportunity for groups or individuals with malicious intentions. The Coronavirus is no different. In fact, the Coronavirus provides an ideal environment for enterprising criminals because it plays on the fear of the virus and prompts individuals to let their guard down and fall victim to phishing and fraud scams.

The United States Secret Service is proactively monitoring for and alerting to Coronavirus. The Secret Service's Global Cyber Threat Center is actively monitoring for and alerting to Coronavirus.

"Phishing" is the fraudulent practice of seeking to reveal personal information, such as passwords, by masquerading as a trustworthy entity in email communication and e-commerce. Criminals use emails posing as legitimate medical and health care providers, purporting to be from a medical/health care provider, regarding the Coronavirus. This leads to individuals providing personal information, or prompting the victim to enter their personal information. This type of incident enables Criminals to steal personal information (PII), financial information (BEC), PII theft, ransomware, and more. More of these incidents are expected, and the Secret Service is actively monitoring for and alerting to them.

For more information, visit:

DJIA 21237.38 5.20% ▲ S&P 500 2929.19 6.00% ▲ Nasdaq 7334.78 6.23% ▲ U.S. 10 Yr -3.26/32 Yield 1.083% ▼ Crude Oil 26.82 6.55% ▼ Euro 1.1007 0.09% ▲

# THE WALL STREET JOURNAL.

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CORONAVIRUS Free to Read • LIVE UPDATES WHAT WE KNOW YOU ASK, WE ANSWER HOW TO NAVIGATE THE CRISIS VIDEO UPDATES

### Hackers Target Companies With Coronavirus Scams



ABUSING FEAR —

## The Internet is drowning in COVID-19-related malware and phishing scams

Emails and websites promise info about the pandemic. In reality, they're shams.

DAN GOODIN - 3/16/2020, 4:02 PM



Enlarge

Emails and websites are promising vital information about keeping safe from the coronavirus, threatening millions. In fact, a flood of them are scams that use malware, ransomware, and disinformation attempt to steal passwords and personal information.



Brian Finch  
Partner  
Cybersecurity

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2. Which Cleaning Supplies Damage Your Phone? We Wiped for Hours to Find Out
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4. Opinion: Alma Deutscher: Composer, Pianist and Violinist
5. The Challenges Ahead as U.S. Works to Contain the New Coronavirus

#### MOST POPULAR ARTICLES

1. A Generational War Is Brewing Over Coronavirus

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# Social Engineering Threats



**Brian Finch**  
Partner  
Cybersecurity

- People are desperate for information
  - Searches for COVID-19 information are dominating the Internet
- Criminals have taken notice
- Deploying a variety of techniques
  - Some are sophisticated, like fake infection maps
  - Fake domain registrations are spiking as well
- Aims are simple:
  - Credential theft
  - Fraudulent payments

# Tips For Mitigating Threats



**Brian Finch**  
Partner  
Cybersecurity

- Alert Employees of Increased Hacking
  - Send training reminders
  - Remind employees who is authorized to contact them
- Add authentication steps
  - Be extra careful with wires and invoice payments
  - Consider password updates
  - Verify communications with vendors
- Monitor updates from law enforcement and security vendors



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National Cyber Awareness System Alerts Enterprise VPN Security

## Alert (AA20-073A)

### Enterprise VPN Security

Original release date: March 13, 2020

Print Tweet Send Email

#### Summary

As organizations prepare for possible impacts of Coronavirus options—or telework—require an enterprise virtual private network (VPN). As organizations elect to implement telework, the Cybersecurity and Infrastructure Security Agency (CISA) is alerting organizations to the risks to their cybersecurity.

#### Technical Details

The following are cybersecurity considerations regarding telework:

- As organizations use VPNs for telework, more vulnerabilities may be exposed.
- As VPNs are 24/7, organizations are less likely to keep them patched.
- Malicious cyber actors may increase phishing emails targeting VPN users.
- Organizations that do not use multi-factor authentication may be more vulnerable.
- Organizations may have a limited number of VPN connections, which may impact operations, including IT security personnel's ability to access systems.

#### Mitigations

CISA encourages organizations to review the following recommendations:

- Update VPNs, network infrastructure devices, and devices used for telework.
- See CISA Tips Understanding Patches and Security Updates for more information.

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EDITION: US



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MUST READ: Coronavirus-themed phishing attacks and hacking campaigns are on the rise

PART OF A ZDNET SPECIAL FEATURE: CYBERWAR AND THE FUTURE OF CYBERSECURITY

## Iranian hackers have been hacking VPN servers to plant backdoors in companies



The Prognosis: Latest News on COVID-19 & NatSec



Trump Calls Out China's COVID-19 Disinformation



Dems Call for 'War' on Coronavirus, But Military Says Help is Limited



What if Your Work Is Classified? 'Work From Home' Doesn't Work



Attacks on DOD Networks Soar as Telework Inflicts 'Unprecedented' Loads



The State of Defense

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## Attacks on DOD Networks Soar as Telework Inflicts 'Unprecedented' Loads



Ms. Lisa Hershman  
Chief Management Officer

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- 2 We've Got The Vaccine, Says Pentagon-Funded Company
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IT security and privacy: Concerns, initiatives, and predictions (TechRepublic Premium)



Brian Finch  
Partner  
Cybersecurity

# The Second Wave – Expert Hacking



Brian Finch  
Partner  
Cybersecurity

- The mass increase in telework is causing unprecedented strain on networks
- IT personnel are struggling to expand capacity
- Most efforts are focused on reliable, stable connections
- Nation states have been laying the groundwork for years to exploit just that situation

# The Threat And What To Do



**Brian Finch**  
Partner  
Cybersecurity

- Foreign hackers are in a prime position to hack networks:
  - Compromised gear
  - Stolen passwords
  - Ability to place to backdoors circumventing VPNs
- What could they do with those exploits?
  - Large scale data theft
  - Ransomware or even wiper attacks
- Vigilance is key:
  - Use tools to monitor data movement
  - Watch for suspicious users
  - Remember attacks are quite possible





Kimberly Higgins  
Senior Associate



Julia Judish  
Special  
Counsel





# Employment: OSHA

## Safe Workplace Obligations

- Duty to provide workplace that is “...free from recognized hazards that are causing or are likely to cause death or serious physical harm”
- OSHA advises evaluating risks, use of preventative controls
- OSHA Guidance outlines workplace and administrative controls and recommends policies, practices
- **Bottom line:** duty to take reasonable steps to protect employees from exposure – including from co-workers and customers



**Julia Judish**  
Special Counsel  
Employment



**Kimberly Higgins**  
Senior Associate  
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# Employment: ADA

## ADA rules apply – but some change in a pandemic

- Medical confidentiality rules still apply: don't name names
- Can ask about symptoms that pose a direct risk to co-workers
- EEOC Guidance: in a pandemic, can take employee temperatures (an otherwise prohibited medical exam)
- Employees with chronic health conditions entitled to accommodations due to heightened risk: telework or paid or unpaid leave



**Julia Judish**  
Special Counsel  
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**Kimberly Higgins**  
Senior Associate  
Employment

# Employment: Practical Options



**Julia Judish**

Special Counsel  
Employment

## Extraordinary circumstances require changed practices

- Preferred option, if feasible: *mandatory* telework, for all but essential onsite positions
- Heightened safety measures and social distancing: alternate shifts; erect barriers; protective equipment
- Mandatory leave/telework for sick or exposed employees
- Flexibility for those with certain issues/disruptions (e.g. childcare, transportation, or high-risk household members)



**Kimberly Higgins**

Senior Associate  
Employment

# Employment: Payment Issues



**Julia Judish**  
Special Counsel  
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## Overlapping laws affect options

- Exempt: pay for full workweek if employer prompted absence; no partial day deductions
  - May require use of paid vacation or convert to hourly non-exempt (varies)
- Federal, state, or local sick leave laws may require payment, but some laws do not permit forced use if employee not sick
- Closures: furlough or layoff? Consider state/federal WARN Act
- Consider offering paid administrative leave or advances on overtime premium pay, bonuses, or commissions (state law variances)



**Kimberly Higgins**  
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Employment

# Employment: Coronavirus Laws/Guidance



**Julia Judish**  
Special Counsel  
Employment

## Federal

- Whitehouse [Guidelines](#) for America - 15 Days to Slow Spread
- Families First Coronavirus Response Act ([FFCRA](#)) – H.R. 6201

## States

- Legislation and Executive Orders (28+ states)
- Statewide/Local Public Health Orders (e.g. “Shelter in Residence”)
- Unemployment, Disability, and other Supplemental Income Programs
- Other State-issued Guidance



**Kimberly Higgins**  
Senior Associate  
Employment



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David Klein

Partner



# Potentially Insurable Risks

## Continuity of Operations

- The enterprise itself
- Service providers/ suppliers
- Event planning/ travel



**David Klein**

Partner

Insurance Recovery

# Potentially Insurable Risks



**David Klein**

Partner

Insurance Recovery

## Liability Exposures

- Bodily injury/ property damage
- D&O liabilities
- Professional liabilities
- Employment liability

# Potentially Insurable Risks

- **Cyber – managing increased vulnerability**
- **Workers compensation**



**David Klein**  
Partner  
Insurance Recovery

# Potentially Insurable Risks: Continuity



**David Klein**  
Partner  
Insurance Recovery

Risk	Insurance	Comments
The Enterprise Itself	First Party Property with Business Interruption	Generally requires property damage
Service Providers/ Suppliers	Contingent Business Interruption/ Supply Chain	Generally requires property damage to providers
Event Planning	Event Cancellation	Purchased per event – need Communicable Disease Endorsement
Travel	Travel Insurance	Purchase per trip

# Potentially Insurable Risks: Liability



**David Klein**

Partner

Insurance Recovery

Risk	Insurance	Comments
Third Party Bodily Injury or Property Damage	Commercial General Liability (CGL), Excess Umbrella Liability	Bodily injury coverage most valuable
D&O “Wrongful Acts”	D&O/ Management Liability	Bad management decision that causes harm other than BI/ PD to third parties
Professional Liability “Wrongful Acts”	Professional Liability/ E&O	Focused on professional malpractice
Harm to Employees – E&O	Employer Liability (not EPLI)	More likely workers’ comp – but depends on claim

# COVID-19 (Coronavirus)

*If you have questions about how the 2019 Novel Coronavirus impacts you or your business, please contact us.*

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