

Cyber Security Governance

Addressing Emerging Expectations

Tom Smedinghoff – Locke Lord LLP, Chicago IL
Tom.smedinghoff@lockelord.com

Seth Jaffe – LEO Cyber Security, Houston TX
seth.jaffe@leocybersecurity.com

Bart Huffman – Reed Smith LLP, Houston TX
bhuffman@reedsmith.com

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Agenda

1. Requirements imposed on corporate decision makers
2. Duties and obligations of Board related to cyber security
3. Questions Board Members should be asking
4. Resources for the company
5. Questions

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Why should officers and directors pay attention?

Why pay attention?

- Fiduciary Duties
 - Duty of Loyalty: in good faith with best interests of corporation
 - Duty of Care: care an ordinarily prudent person in a like position would exercise
 - Protected by Business Judgment Rule
 - Disinterested director
 - Informed business decision
 - In good faith
 - Without abuse of discretion

Why pay attention?

- *In re Caremark Int'l*, 698 A.2d 959
 - Board's oversight role includes a duty to attempt in good faith to assure:
 - Existence of a corporate information and reporting system
 - That the system provides timely and accurate information to the Board in order for the Board to reach informed judgments on company compliance

Home Depot Shareholder Derivative Suit

Facts

- Loss
 - Financial data of 56 million customers
 - Overall cost of \$10B
- Oversight
 - Board dissolved Infrastructure Committee
 - Board delegated oversight to Audit Committee, but failed to amend charter
 - Board moved too slow to implement PCI-DSS compliance

Ruling

- Complaint
 - Board failed to institute internal controls
- Holding
 - Audit committee was receiving reports from management
 - Board believed Audit Committee had technical authority
 - Audit committee briefed Board
 - Board had a plan for PCI-DSS compliance (decisions must be reasonable, not perfect)

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