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**A PRACTICAL GUIDE TO COMMENCING CIVIL CLAIMS
FOR COMPUTER HACKING**

If you fall victim to a computer hacker, you may feel as though you have no legal recourse because you are unlikely to have any identifying information about the hacker. Nonetheless, you may have a viable claim against the hacker under the Computer Fraud and Abuse Act, 18 U.S.C. § 1030. Originally enacted by Congress in the 1980's as a criminal statute to deal with the emerging problem of digital crimes, the Computer Fraud and Abuse Act was later amended to add civil remedies for a variety of computer-related crimes, including computer hacking.

In order to state a civil claim for computer hacking under the Computer Fraud and Abuse Act, a plaintiff must allege that the defendant "intentionally accesse[d] a computer without authorization or exceed[ed] authorized access, and thereby obtain[ed]... information from any protected computer." 18 U.S.C. § 1030(a)(2)(C). A "protected computer" broadly encompasses computers, tablets, and smartphones (among other devices) so long as they are "used in or affecting interstate or foreign commerce or communication." *Id.* § 1030(e) (1-2). Additionally, a plaintiff must allege that the unauthorized access to her computer

caused at least \$5,000 in economic damage or loss to one or more persons during any one year period. *See id.* §§ 1030(c)(4)(A)(i)(I), 1030(g).

Once you decide to file a claim, the first step will be to hire a digital forensics investigator to determine the exact date of the hack and the IP address of the computer that hacked your computer. The American Registry for Internet Numbers allows you to conduct a free search on their webpage for the owner of an IP address. Typically, however, IP addresses are not owned by individuals, and it will usually show that the IP address belongs to an internet service provider ("ISP") such as AT&T, Verizon, or Time Warner Cable.

Therefore, in order to identify the specific person responsible for the computer hacking, a plaintiff will need to subpoena the ISP for the name and address of the individual who possessed the relevant IP address on the relevant date. To do so, a plaintiff should file her Computer Fraud and Abuse Claim against a John Doe Defendant who possessed the relevant IP address on the relevant date.

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Time is of the essence in litigating a Computer Fraud and Abuse Act claim. IP addresses change frequently, and some ISPs only retain who was assigned a particular IP address on a given day for as little as 90 days. Thus, the best practice is to file an *ex parte* motion for expedited discovery attaching the subpoena contemporaneously with the complaint. Since many ISPs also qualify as cable providers under the Cable Communications Policy Act, see 47 U.S.C. § 551(c)(2)(B), the motion must also ask the Court to issue an order requiring the ISP to comply with the subpoena because cable providers cannot release customer information absent a court order.

After the ISP responds with the name of the individual, the plaintiff should quickly amend the complaint to name the individual and serve him or her with a request to inspect their computers as soon as possible, as the data from their computers will be the most persuasive evidence of hacking. Moreover, skilled hackers sometimes operate through another person's IP address, so a forensic inspection of the defendant's computers may reveal they themselves were hacked, necessitating a second round of subpoenas to the ISPs.

By moving quickly, you may be able to obtain relief for the loss you suffer if your computer devices are hacked.



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INSURANCE ARCHAEOLOGY – TIPS FOR DIGGING UP HISTORICAL COVERAGE

Commercial general liability insurance policies are extremely valuable to businesses facing third-party liability claims, even where the policies are decades-old and their express coverage periods have expired. Particularly in the case of “long-tail” liability claims that involve a continuous or repeated injury over long periods of time (e.g., asbestos exposure, environmental contamination), historical policies may provide coverage where current policies do not.

When asbestos personal injury lawsuits proliferated in the early 1980's, countless American companies found themselves literally searching their offices for old policies that could provide coverage. This commercial need gave rise to a cottage industry known as insurance archaeology – the reconstruction and analysis of historical insurance coverage.

While many companies that were repeatedly sued in asbestos or environmental litigation undertook insurance archaeology projects by the 1990's, the same cannot be said for a growing number of companies now being named in these lawsuits for the first time as the field of solvent defendants continues to shrink. Moreover, just as manufacturers may not have anticipated the magnitude of asbestos and environmental litigation before the 1980's, it is difficult to predict what category of products might be the “new asbestos” 15 years from now.

Ideally, businesses would have detailed records of historical coverage, along with complete policy copies, in a readily accessible location known by key personnel. Unfortunately, this is rarely the case in practice, but even if a company cannot find copies of its historical policies, a methodical review of secondary evidence might still unearth available coverage. Third-party specialists can coordinate this work, but a company can find valuable leads on its own. This is where archaeology comes into play – knowing what to look for and where to find it.

Businesses can often find evidence of historical insurance coverage through some combination of the following steps:

- 1. Reach out to insurance brokers.** Companies both large and small generally purchased insurance through outside brokers who assisted the company in identifying what coverage was needed and the carriers best suited to offer it. Because their business is essentially customer service, brokers often maintain records of policies they placed, and a helpful broker with good records will be the best resource for reconstructing coverage.
- 2. Consult past management.** Former management personnel who had risk management responsibilities are another valuable source of information. Before businesses employed designated risk managers, insurance procurement was often the job of the corporate treasurer or secretary. Even a retired officer's vague recollection that the company “always used Travelers” is a good start.
- 3. Revisit past claims.** If the company previously faced any third-party liability claims (e.g., workers' compensation, construction defects, or even a slip and fall on the company's sidewalk), internal files for those claims might identify then-current coverage.

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4. Dust off the old ledgers. Archived accounting records like payment ledgers will frequently track annual premium payments made to carriers or brokers, sometimes even with references to the policy numbers and policy periods in question.

5. Review contract files. Old contracts can generate leads on historical coverage in several ways. Contracts under which the company acquired or divested of substantial business assets or even subsidiary entities will often include schedules of coverage, and even if the agreement itself does not identify coverage, a due diligence file on the transaction might. Agreements with suppliers, distributors, and/or subcontractors also may have required the company to provide its business partners with a certificate of insurance that identifies key details of the subject policies. Similarly, if the company ever did business with federal, state, or even local governments, those agencies often required proof of insurance as a matter of course.

If a business faces a claim where the alleged conduct dates back into the company's history, or even if a company wants to compile its historical coverage before secondary evidence has been lost, there is no time like the present to take these steps. In either case, digging up the details of historical insurance coverage is a critical first step in minimizing the company's direct exposure and securing valuable coverage that may be far more than just a thing of the past.



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