

# Fisher Broyles

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**Practice Areas:** Commercial Litigation; Construction & Design Professionals; Cyber-Risk, Privacy & Data Security; Environ, Health & Safety; FinTech and Blockchain; Insurance; Litigation — Civil Pretrial and Trial Services; Litigation & Risk Mgmt; Mediation; Professional & Management Liability; Technology

**Bar Admissions:** New Jersey; New York; United States District Court - District of New Jersey

**Education:** Syracuse University College of Law, Juris Doctor, 2003; Ithaca College Roy H. Park School of Communications, Bachelor of Science in Cinema Studies, 2000

**Experience:** Traub Lieberman Straus & Shrewsberry LLP

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Stu Panensky is an experienced business attorney and commercial litigator. Stu handles all phases of routine and complex civil litigation up through and including trial. He advises professional and corporate clients across multiple business sectors on risk mitigation and the defense of third party claims. Stu's practice is concentrated in the following practice areas.

## Cyber-Risk & Data Breach

Please note our 24/7/365 toll free number

833-FB-CYBER (833-322-9237)

Stu has significant experience acting as data breach counsel to companies in multiple verticals including professional services, retail, hospitality, financial institutions, technology and healthcare. Stu leads breach response investigations including working with his clients' internal IT and digital forensics to provide legal advice on the nature of the occurrence, scope of data exfiltration, obligations to notify impacted consumers and/or state and federal government regulators as well as contractual obligations to report to the Payment Card Industry (PCI). As breach counsel, Stu is networked with quality breach response

vendors (IT, forensics, e-discovery, public relations, breach notification and others) and coordinates them in data breach response efforts including print and email notification, call-center management, credit monitoring and restoration services, and other cyber-incident response activity.

Stu also provides legal counsel related to pre-breach cyber-risk preparedness including drafting incident response planning documents, hosting mock-breach “tabletop” presentations to clients, opining on privacy and data and information security company policies as well as reviewing technology vendor/provider contract agreements and scope documents.

### **Technology Errors & Omissions**

Stu represents a multitude of IT professionals, software developers and other tech-sector enterprises in the defense of third party claims of errors and omissions arising out of the performance of technology services, technology products, application vulnerability, "scope creep" and other technology performance issues.

### **Cyber Insurance**

Stu Panensky was one of the earliest attorneys to provide advice to the insurance industry on insuring electronic data, information security, network extortion, and other cyber-risk issues. In that capacity, Stu offers insurers advice on stand-alone cyber insurance policy provisions, cyber endorsements to other commercial policies as well as exclusions and related provisions. Stu also authors cyber-insurance coverage opinions and counsels insurers on all cyber-coverage issues including representing insurers in the prosecution of or defense of declaratory judgment actions.

### **Design Professional Liability & Construction**

From the earliest days of his career, Stu Panensky has represented design professionals (architects & engineers) as well as construction managers, general contractors and subcontractors and owners/developers from allegations of design malpractice and construction defect. Stu has acted as lead counsel to target defendants in large and complex construction-related litigation. Stu has defended a variety of causes of action against design professionals and contractors including negligence/professional negligence, breach of contract, consumer fraud, breaches of warranty and construction/building code violations. Stu's construction litigation experience has involved commercial developments including small

and mid-rise towers, bridges, amusement parks, indoor sports facilities, retail complexes, land redevelopments, pre-engineered structures, and residential homes and multiple-unit dwellings. Stu has extensive experience in advising architects, engineers, and contractors on sensitive risk-transfer issues including contractual indemnification, contribution and additional insurance. Stu has also represented construction product manufacturers in product liability/ defect litigation. Finally, Stu also handles construction site bodily injury claims.

### **Environmental**

Stu Panensky frequently defends companies whose business interacts with hazardous material, contamination and pollution. Stu has represented environmental professionals, cleanup contractors, oil & gas delivery providers and licensed and unlicensed site remedial specialists from claims of New Jersey Spill Act and CERCLA violations, negligent contamination, compliance issues, natural resource damages and cost recovery/contribution.

### **Miscellaneous Professional Liability**

Stu has diverse experience representing other miscellaneous professionals from malpractice claims including title / escrow agents, insurance producers, realtors, banking professionals, land surveyors, financial service providers and other professionals and specialists.

### **General Liability**

Stu has litigated scores of commercial general liability matters in all phases of civil litigation in multiple jurisdictions up through and including both jury and bench trials. He has significant experience in premises liability, trucking/ commercial auto liability, homeowner-association liability, subrogation, and other general tort and contract liability.

## **Representative Matters**

### **Representative Cyber Matters**

- Counsel to numerous professional service firms on lost/stolen devices
- Counsel to bank in email hack incident
- Counsel to recruiting agency for network security breach

- Counsel to hospitality chain for PCI breach
- Counsel to medical records cloud repository on network security breach and PHI loss
- Counsel to law firms, investment advisors, medical offices, design firms and title agents on ransomware attacks
- Coverage / monitoring counsel for excess insurers on cyber insurance towers
- Counsel to numerous companies that are the subject of post-incident regulatory investigations at both the state and federal level

#### **Representative Technology Errors & Omissions Matters**

- Counsel to numerous IT service providers in professional negligence claims
- Counsel to telecommunications provider in technology product defect claim
- Counsel to software developer on claims of application security-vulnerability
- Counsel to application developer on breach of contract / user license agreement

#### **Representative A&E and Construction Matters**

- Counsel to project architect in multi-million dollar recovery action brought by owner/developer of a public amusement park
- Counsel to project engineer in multi-million dollar recovery action brought by municipality
- Counsel to numerous construction trade subcontractors in complex construction defect litigation brought by New Jersey homeowner associations arising out of multiple-unit housing development construction projects
- Counsel to numerous architects of record, general contractors and construction managers seeking defense and indemnification from subcontractors
- Counsel to contractor-employer in workers' compensation defense matters where there are contractual indemnification obligations
- Counsel to construction product manufacturer in product liability/ defect claim arising out of the construction of multiple-unit housing development

#### **Representative Environmental Matters**

- Counsel to numerous New Jersey Licensed Site Remediation Professionals in professional negligence claims brought by owners/developers
- Counsel to home heating oil delivery service in New Jersey Spill Act contribution claim
- Counsel to chemical manufacturer / distributor in CERCLA claim
- Counsel to New Jersey homeowner in recovery action by other Potentially Responsible Parties

### Select Presentations and Teaching Experience

- "Cyber & Privacy Risk Primer" - Wholesale & Specialty Insurance Association University Program - August 2019
- "Cyber Security and Social Engineering for Lawyers and Law Firms" - NetDiligence Cyber Risk & Privacy Liability Forum - June 2019
- "Cyber Claim Handling Best Practices" - 2019 CLM Annual Conference - March 2019
- "Insurance Solutions for Cyber Risk" 2019 RSA Conference - March 2019
- "Liability Arising Out of Cyber Occurrences" 2019 Annual Execusummit, March 2019
- "The Retail Data Breach and the Payment Card Industry" - NetDiligence Cyber Risk & Privacy Liability Forum - June 2018
- "Hospitality and the Emerging IoT Dilemma" – CLM & Business Insurance Retail, Restaurant & Hospitality Conference – February 2018
- "When Technology Fails: Liability for Technology Errors & Omissions" - NetDiligence Cyber Risk & Privacy Liability Forum – October 2017
- "When Technology Fails: Liability and Insurance Coverage for Technology Professionals" - Claims and Litigation Management Alliance (CLM) Management & Professional Liability Conference – July 2017
- "Cyber Claim Trends" - Annual ExecuSummit – (2015 – 2018)
- "Professional Services Data Breach" – NetDiligence Cyber Risk & Privacy Liability Forum – October 2016
- "Handling Cyber-An Insider Look at Managing the Resolution of a Cyber Claim" – Claims and Litigation Management Alliance (CLM) Cyber Liability Summit – October 2016
- "Tools of Tomorrow: Role of Technology in Design, Construction and Dispute Resolution" – Claims and Litigation Management Alliance (CLM) National Construction Claims Conference – September 2016
- "The Evolving Landscape of Cybersecurity Risk" – National African American Insurance Association (NAAIA) – June 2016
- "The PHI Data Breach: Preparation and Response" – NetDiligence Cyber Risk & Privacy Liability Forum – October, 2015 & June 2016
- "Common Legal Issues Confronted in the Use of Technology and in the face of a Data Breach" – Philly I-Day – April 2016
- "Cyber Liability-Tales from the Cyber Front Line"-CLM Annual Conference – April 2016

- “A Practical Review of Cybersecurity and Major Insurance Issues and Trends” – ARIAS-US 2015 Fall Conference – November 2015
- “The Retail Data Breach: Navigating the Murky Waters of the Payment Card Industry” – CLM Cyber Summit – October 2015
- “The Devil Is in the Data: An Experiential Lesson on Cyber Insurance Coverage in the Real World” – Bermuda Insurance Market Conference – October 2015
- “Data Security, Privacy & Cyber” – Bermuda Insurance Institute Education Series – April 2015
- “Tales From the Cyber Liability Front-Lines” – 2015 CLM Annual Conference – March 2015
- “Healthcare Provider/Health Insurer Data Breaches and Liability Implications of a Loss of PHI” – ACI’s 10th National Forum on Cyber Data Risk Insurance – March 2015
- “Spotlight on Healthcare – Cyber Risk” Advisen Cyber Risks Insights – October 2014
- “Anatomy of a Data Breach” CLM Cyber Summit – October 2014
- “Technology in Construction” MC Conference East Region Construction Litigation & Insurance Coverage Conference – June 2014
- “Coverage Issues in Cyber-Risk” – DRI Insurance Coverage and Practice Symposium – December 2013
- “Cyber Liability for Law Professionals” – DRI Professional Liability Seminar – December 2013
- “Anatomy of a Data Breach” – FDCC Insurance Industry Institute I-3 – September 2013
- “Technology and the Practice of Law” – ADTA Annual Conference – April 2013
- “Litigation Trends and Crystal Ball” – New York State Bar Association – November 2012

## Publications

- "Insurance Solutions for Cyber-Related Risk", Cyber Security & Data Management in the Modern Digital Age (2019 Edition), Financier Worldwide
- "The Anatomy of a Cyber Incident Response", CLM Magazine, June 2019
- "Technology and Cyber-risk Obligations and Issues for Lawyers and Law Firms", Michigan Business Law Journal, Summer 2019
- "Where to Turn for Cyber Assistance?", Insurance Thought Leadership, October 2019
- "What Is a "Grey Hat" Hacker and Why Are They so Annoying?", Transatlantic Reinsurance Company's quarterly cyber newsletter, 2Q2018
- “When Technology Fails – Understanding Liability Issues Arising Out of Technology” Professional Times, Spring 2018

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- "Chapter 14: Insurance Coverage for Cyber Losses" – Data Security and Privacy Law – Combating Cyberthreats (West Publishing, 2004-2018)
- "Interconnectedness of the Cyber-Risk World" – CLM Litigation Management, Summer 2014
- "Cyber Risk for Lawyers and Law Firms" – DRI For the Defense, October 2014

## Honors

- New Jersey Super Lawyer, Rising Stars (2013 - 2018) This award is conferred by Thomson Reuters. A description of the selection methodology can be found at [www.superlawyers.com/about/selection\\_process\\_detail.html](http://www.superlawyers.com/about/selection_process_detail.html). No aspect of this advertisement has been approved by the Supreme Court of New Jersey.