



2023 ISBA Mutual Mirza Risk Management Conference

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Stress in the Workplace: The Impact it Has on Our Thinking and Wellbeing

Illinois Lawyers' Assistance Program

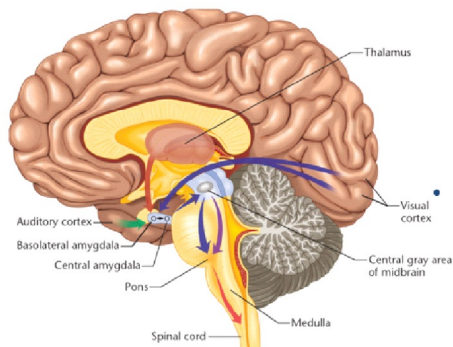
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“Anatomy is Destiny” (Sigmund Freud)

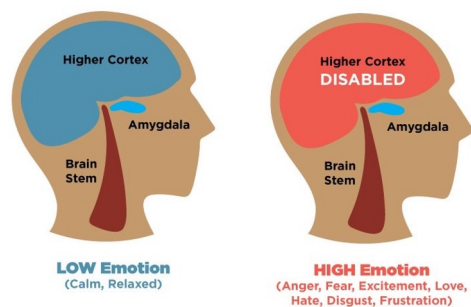


- Self Awareness
 - Noticing internal thoughts and feelings, especially around stress and change.
 - Knowing strengths and weaknesses
- Self Management
 - Avoiding the “amygdala hijack”
 - Lessening reactivity
 - Choosing wise action
 - Buffering stress and “overwhelm”

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Amygdala Hijack



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Attorneys Under Stress

Loss Aversion Effect: **Flight**

Righting reflex: **Fight**

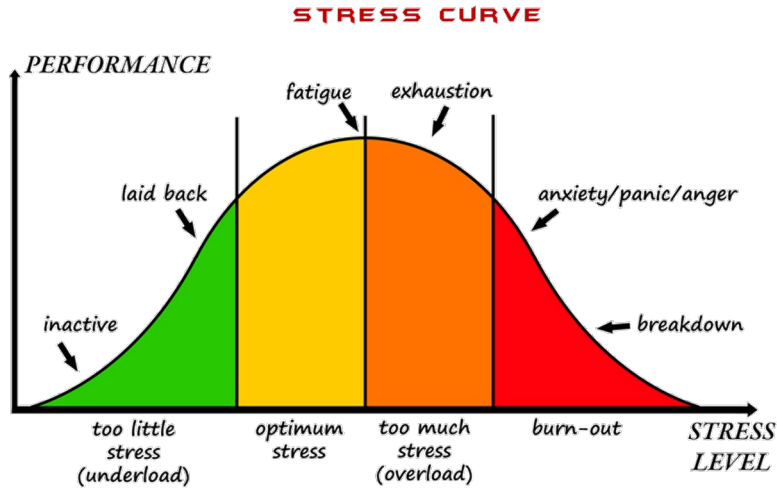
Uncertainty: **Freeze**



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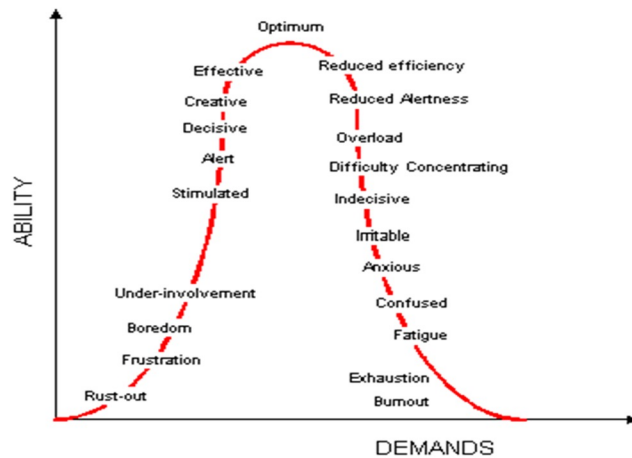
Stress Curve: Lawyers Beware



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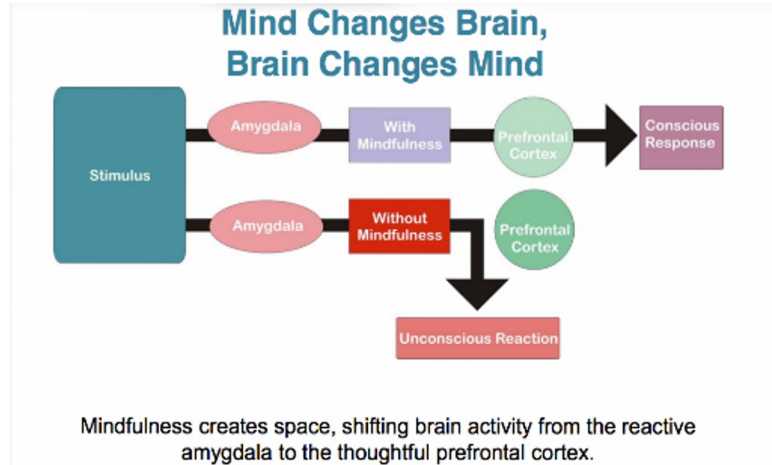
Stress and its Role on Performance



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Mindfulness is a Pause—the space between stimulus and response; that’s where choice lies” Tara Brach



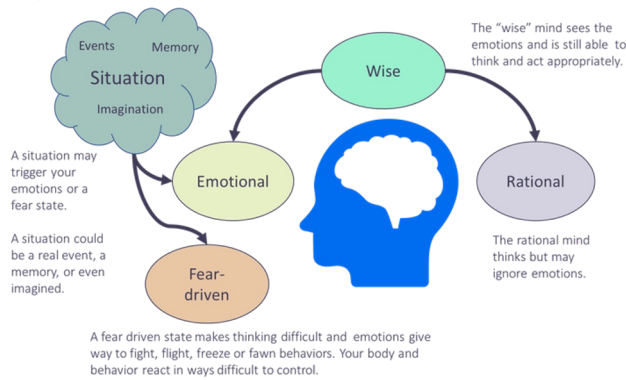
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How Emotions Trigger Responses

Handle Your Emotions

A situation arises that triggers an emotional response. Your thoughts, body, behaviors all begin to change. In the right circumstance, all goes well. In the wrong one, your response may go against your best interest. Maintaining a “wise” mind allows you to see your emotions, physical response, and still maintain your decision making.



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Attorneys Under Stress

Cognitive depletion—negative effects on our decision making and cognitive resources when tired, hungry or under stress

Perceptual narrowing—Brain uses environmental experiences to shape perceptual abilities—neural pathways that are used more are strengthened making them more efficient; those not used as much become less efficient (neuroplasticity and synaptic pruning)

Zero sum bias—cognitive bias that causes people to mistakenly view certain situations as zero sum i.e. that one party's gain is balanced by other parties' losses (competition for a resource they feel is limited when in fact the resource is unlimited and available)

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Evidenced Based Strategies

Mindfulness Stress Reduction (Persistent Patience)

- Wide and varied applications
- 20 plus years of research

Thought Challenging

- Based on cognitive restructuring therapies
- Demonstrated effectiveness for many problems

Managing Uncertainty/Ambivalence

- Based on enhancing intuition practices
- Change resistive thinking into resilient thinking

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Persistence Patience-Mindfulness Strategies

1. Non-judging—Judge less, observe more
2. Patience—awareness of emotions and mindset
3. Beginners Mind—look at things as if the first time “fresh viewpoint”
4. Non-striving-become more aware, more often
5. Acceptance-Comfort in discomfort; sitting with instead of avoidance
6. Letting Go—more discomfort often leads to being less insightful and intuitive
7. Trust

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Self Guided Process

1. Observe thoughts
Non-striving/Non judging
2. Identify thinking patterns
Patience
3. Identify cognitive distortions
Non-judging/Accepting
4. Challenge cognitive distortions
Letting go
5. Construct alternative thoughts/beliefs
Fresh mind
6. Behavioral Experiments
Trust/Patience
7. Re-calibrate (step 1)

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Thought Record---27 y/o female attorney

Situation/Event	Automatic Thought	Feeling/MFN	Emotion (1-10)
Started new job; increasing work load, little support	"If I'm competent and want to be successful, I can't ask for help."	Fear Depression Patience/Non-judging	Righting reflex 8
Recommended to take time off work for treatment	"I will probably lose my job if I'm off of work for more than a few days."	Fear/Panic Non-striving/letting go	Loss aversion 8
Overwhelming work load and expectations	"I can't keep up; I'll be judged a 'loser'."	Depression/Anxiety Trust/Fresh Mind	Perceptual narrowing 10
Father's illness, work more hours	"Must do it without support; can't burden my family/friends"	Guilt/Anxiety Non-striving/Trust	Panic vs. Urgency 10

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The Impact of Stress on Decision Making



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Challenge your Thinking



“Mental” reactions to situations

Real, imaginary/perceived;
anticipatory

Not fully conscious or deliberate

Instantaneous and immediate

Intense emotional associations

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Challenging Automatic Thoughts

Thoughts are NOT Facts

I – Identify the Thought-- “I am 80 % positive I will lose my job if I take time off”

C – Challenge the Thought—Evidence for (loss aversion) and Against thought

E – Evaluate the Thought--Post challenge certainty rating (Revise thought to make it more truthful)

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Managing Uncertainty and Ambivalence-Improving the use of Intuition

*“... she just kept saying,
‘We’ve got to find the child.’”*

The story of a two-year old girl who miraculously survived a horrible crash that killed her parents captivated the nation in March 2003. But if it were not for the determination of Wisconsin State Patrol troopers and others at the crash scene, the story might not have had at least one fortunate ending.

Before dawn on March 7, Troopers Sean Berkowitch and Rhonda Waldera, of District 5—Tomah, were at the scene of a fatal crash on a rural stretch of Interstate 94 in Jackson County. A westbound semi-truck had jack-knifed on the icy road and crossed the median into the eastbound lanes. A Honda with Minnesota license plates hit the semi’s trailer and then passed underneath—shearing off the top of the car. It traveled another 700 feet before ending up in the median. Both adults inside the car were dead. That much was known.

But Trooper Waldera also was concerned about the unknown. While investigating the scene, she found a coat, blanket, a “sippy” cup and some pull-up diapers in the car. These items indicated that a small child



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Why is Work-Life Balance so difficult to achieve?

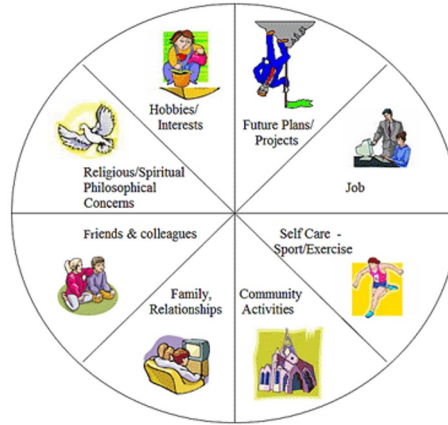


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A Balanced Life



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Barriers to Balance



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Strategies to Achieve Balance



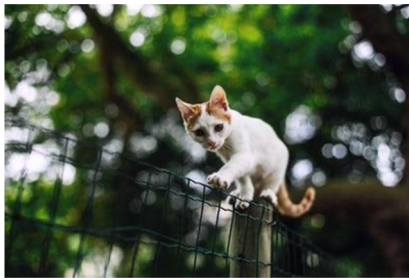
- Set your priorities
- Track your time
- Concentrate on one thing at a time
- Schedule one thing you look forward to each day
- Increase social connections

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More Strategies to Achieve Balance



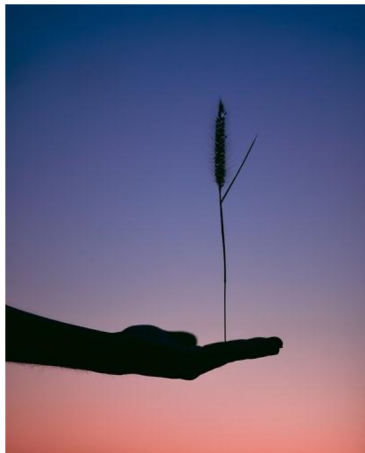
- Respect your private time
- Evaluate your personal habits and lifestyle
- Use your vacation and personal days
- Ask for support and help as needed

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More strategies to Achieve Balance



- Get plenty of exercise and activity
- Set boundaries
- Find a mentor
- Learn to say “NO”
- Continually reevaluate your work life balance on a regular basis and determine if the work is able to be balanced with your life and values

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Strategies to Improve Balance



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Strategies to Improve Balance

- Some things beyond our control to change
- Take action to reduce or remove stressor
- Break problems down into smaller more manageable pieces
- Take a time management course
- Replace negative relationships with positive ones
- Adopt self – care practices
- Develop outside activities – hobbies, social events, educational challenges
- Seek advice from others
- Commit to the notion that managing stress is a permanent and ongoing activity

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Things to Remember



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WE CAN HELP WITH

Stress - Anxiety - Grief Depression
 Career Transitions
 Addiction - Substance Abuse
 & Much More

Services tailored to the legal profession:

- > Short-term counseling
- > Support Groups
- > Referrals
- > Interventions
- > Help with ARDC Concerns



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Lawyers' Professional Liability

Garrett Kern

- ▶ Chief Claims and Risk Management Officer
- ▶ ISBA Mutual Insurance Company

Adam W. Czerwinski

- ▶ Owner and Principal Agent
- ▶ Sidebar Insurance Solutions, Inc.

What are We Talking About?

What we are observing in claims, not only in legal professional malpractice, but how those malpractice issues relate to additional areas of risk management generally, including cyber liability.

What Types of Claims Do We See?

What are Examples of Claims Related to Substantive Errors?

- ▶ Failure to Know or Apply the Law Correctly
- ▶ Inadequate Discovery or Investigation

What are Examples of Claims Related to Client Relations?

- ▶ Failure to Follow Instructions
- ▶ Failure to Provide Sufficient Information / Obtain Consent



Failure to Know Or Apply the Law Correctly

Definition: This category applies when a lawyer is unaware of the legal principles involved, or when a lawyer does the research but fails to ascertain the appropriate principles. It applies in instances of erroneous reasoning from known principles.

Failure to Know Or Apply the Law Correctly

Practice Tips

- ▶ Know your area of expertise – DON'T DABBLE
- ▶ Continually study the law by taking advantage of relevant CLE
- ▶ Check the credentials of new lawyers, lateral hires, backup lawyers, and referral sources
- ▶ Supervise and properly train associates, paralegals, and staff
- ▶ Require the approval of two attorneys for opinion letters.
- ▶ Use checklists and forms.

Source: The Fundamentals of Loss Prevention for Lawyers, ISBA Mutual

Failure to Know Or Apply the Law Correctly

Tips to Avoid Missing Statutes

- ▶ Make your initial calculation of the statute of limitations date(s) immediately
- ▶ Do not assume you already know the applicable statute of limitations
- ▶ Be on the alert for unusual circumstances that might impact your statute of limitations analysis.
- ▶ When working in an unfamiliar venue, always call local counsel to verify foreign statutes of limitations
- ▶ Do not rely solely on information provided by any one source, particularly clients
- ▶ Check the Illinois State Bar Association's current Guide to Illinois Statutes of Limitations and Repose and other resources

Source: The Fundamentals of Loss Prevention for Lawyers, ISBA Mutual

Inadequate Discovery/Investigation

Definition: This category includes cases where the claimant alleges that certain facts which should have been discovered by the lawyer in a careful investigation or in the use of discovery procedures were not discovered or ascertained.

Inadequate Discovery/Investigation

Practice Tips

- ▶ Ask questions... and then ask more
- ▶ Pay attention to details
- ▶ Take thorough notes
- ▶ Verify all levels of ownership: Government, Corporations, Private Companies.
- ▶ Methods of discovery:
 - ▶ Client Interviews
 - ▶ Non-party Interviews
 - ▶ E-Discovery
 - ▶ Interrogatories
 - ▶ Deposition

Source: The Fundamentals of Loss Prevention for Lawyers, ISBA Mutual

Failure to Follow Instructions

Definition: Attorneys are supposed to follow the instructions of their clients and a failure to follow instructions claim can be made whether or not the failure was intentional or unintentional.

Failure to Obtain Consent/Inform Client

Definition: This category involves cases where a client asserts that, if the client had been fully informed by the lawyer of various alternatives or the risks involved, a different course of action would have been selected. It would also apply when the lawyer should have communicated with the client and obtained consent to proceed but did not.



Client Relation Claims

Practice Tips

- ▶ Prepare an engagement letter and have it signed by client
- ▶ Increase your documentation
- ▶ Send letters to unrepresented parties
- ▶ Retain a record of your research
- ▶ Retain copies of all drafts of agreements and contracts
- ▶ Send a disengagement letter when you are withdrawing from representation. Contact your insurance carrier's risk management support for examples
- ▶ Communicate in writing
- ▶ Get written confirmation from client. Get it signed
- ▶ Document. Document. Document.

Source: The Fundamentals of Loss Prevention for Lawyers, ISBA Mutual

Elements of an Engagement Letter or Fee Agreement

- ▶ A clear identification of who the client is.
- ▶ A detailed description of the legal work to be performed.
- ▶ A description of any critical aspects of the matter for which the lawyer will not be responsible.
- ▶ A detailed description of the fee arrangement.
- ▶ In the case of solo lawyers, the identification of a backup lawyer designee.
- ▶ File retention and destruction procedures.
- ▶ Language that indicates that your firm will not be delivering wire transfer instructions.
 - ▶ For sample engagement letters and fee arrangements, contact your bar association & various online resources.

Disengagement

- ▶ Termination of Representation
- ▶ Removing yourself from a case/matter after having accepted it but before the matter has concluded
- ▶ Unpaid Fees
- ▶ File Closing Letter

Non-Engagement

- ▶ If the firm declines representation, always send a letter to the individual or entity that has been declined.
- ▶ The Non-Engagement letter should clearly state your decision not to represent the declined client
 - ▶ Never give an opinion as to the viability of a particular case or matter.
 - ▶ Do not specify the statute of limitations date in your letter.
- ▶ This can be accomplished quickly with a form letter you can obtain from your bar association & various online resources.

Client Relation Claims

Tips on What to Document

- ▶ Client's consent to all major decisions.
- ▶ Client's instructions to proceed in a manner against the client's best interests.
- ▶ Anything unusual.
- ▶ All demands/offers and the client's response.
- ▶ Telephone calls.
- ▶ Err on the side of everything.

Legal Malpractice Claims

Examples

- ▶ Inter-related Business Relationships
 - ▶ Lawyer Involved in Start-up as Attorney and Investor
 - ▶ Lawyer Accused of Stealing Intellectual Property
 - ▶ Lawyer's Defense: Business Had Other Counsel to Handle IP
 - ▶ Insured involved in multi-state litigation with over \$200k spent in defense.
 - ▶ Coverage?

Legal Malpractice Claims

Examples

- ▶ Friends as Clients
 - ▶ Lawyer Handles Real Estate Closing For Friend (Seller)
 - ▶ Friend's Deal is with Lawyer's Existing Client (Buyer)
 - ▶ Buyer Does Not Have Lawyer. Why?
 - ▶ Error: Insured Fails to Convey Two Parcels
 - ▶ Buyer Realizes House on Property was Sold in Tax Sale
 - ▶ Insured sued by Buyer for damages.
 - ▶ Conflict Waiver?

Legal Malpractice Claims

Examples

- ▶ Family as Clients
 - ▶ Lawyer's cousin would call him with legal questions;
 - ▶ Cousin bought property at sheriff's sale with lien on it;
 - ▶ Lawyer said he told cousin to pay off lien as soon as possible but no documentation
 - ▶ Eventually the property was sold to the judgment holder and cousin sued Lawyer.
 - ▶ Insured had never charged cousin or was paid any fees.

Legal Malpractice Claims

Examples

- ▶ Family vs. Family
 - ▶ Sister v. Brother (Lawyer): Allegation is that Brother Failed to Advise Sister to Get a Survey of Deceased Mother's Home
 - ▶ Sister Sole Owner after buying out Brother Lawyer
 - ▶ Flood damaged Home
 - ▶ Home Cannot Be Repaired or Rebuilt Because of Easement
 - ▶ Expert v. Expert: Was A Survey Required Prior to Being Bought Out?
 - ▶ Mediated Settlement

Lawyers' Professional Liability

- ▶ What is Lawyers' Professional Liability Insurance?
 - ▶ Malpractice, Negligence, Errors and Omissions Coverage.
- ▶ But why do you need it?
 - ▶ Mistakes happen and your CLIENT needs to be made whole
 - ▶ OR
 - ▶ No malpractice was committed, but you have to be DEFENDED!

Lawyers' Professional Liability

- ▶ How do I report a claim?
 - ▶ Reporting information is usually on the Declarations Page
 - ▶ May also be on the Policy Form
 - ▶ Follow the Reporting Requirements of your Policy
 - ▶ Date(s) of Wrongful Act; Alleged Damages; Claimant's Name; Date you became aware of a Claim
 - ▶ Attach a copy of the lawsuit, demand, e-mail, etc.
- ▶ Why is timeliness important?
 - ▶ Professional Liability Policies are Claims Made and Reported

Questions?

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Business Email Compromise & Wire Fraud

How you can prevent BEC
attacks and Wire Fraud before it
happens, and what to do if
you're a victim.

0

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- ▶ Mat Kresz is a Cybersecurity & Data Privacy, Technology, Intellectual Property, and Business attorney in Chicago.
- ▶ Notably, Mat's practice is informed and enhanced by his background in business as a business leader and as a former Chief Information Officer (CIO) at a mid-size enterprise that served Fortune 500 clients.
- ▶ Through the business and technology experience he gained in those roles, Mat is equipped to identify opportunities, solve problems, and mitigate risk with business requirements in mind.

1

Today's Agenda

- I. Common Terms
- II. BEC & Wire Fraud Case Studies and recent developments regarding BEC
- III. What you can do to prevent a BEC and Wire Fraud
- IV. What to do if you're a victim
- V. Ethical (and legal) responsibilities

2

I. Common Terms

▶ Phishing

Practice of sending fraudulent emails that purport to be authentic to induce recipient to take actions that leads to fraud.

▶ Spear Phishing

Phishing that targets specific individuals.

▶ BEC

"Business Email Compromise." Incidents where an email account becomes compromised –whether a "business" email account, or otherwise.

▶ SPAM (in Contrast to Phishing)

Junk email. Unwanted, unsolicited, and sent in bulk, but not necessarily malicious.

▶ ESP

Email Service Provider, such as Office 365, G Suite for Business, ZOHO, etc.

▶ Tenant (Also Email Tenant or Tenant Account)

A company account within an ESP that contains one or more email boxes. The account that is designated to be the "Admin" account usually provides access and visibility to all email boxes and their configuration within the Tenant

Account.

▶ Mailbox Rules

Email handling rules that perform one or more actions on an email message when a certain condition is met. Example: A mailbox rule could be established to forward any email that contains "wire" or "money" to fraudster@aol.com.

▶ MFA or 2FA

"Multi-Factor Authentication" or "Two Factor Authentication." Commonly, it is an access code that is generated by the service provider (such as an ESP) and texted to the user that the user must enter in addition to their user name and password to access the subject service.

▶ Session Cookie

A small file saved to a computer that a website uses to confirm that the user has previously authenticated (successfully logged-in), so that the website need not request the user's credentials to re-authenticate him/her when the user clicks a link while in that session. Note: this is not the "remember me" feature, but can function like it.

▶ Threat Actor

The bad guy. Usually part of a gang that specializes in certain types of cyber crime.

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II. BEC & Wire Fraud Case Studies

- ▶ A) Law Firm that Practiced Family Law Experienced a BEC; Notified Client/s
- ▶ B) BEC in a Real Estate Transaction Resulted in \$380,000 Loss
- ▶ C) Law Firm Wired \$63,000 Settlement Payment to Fraudster; Client Sued

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II. A) Law Firm with Family Law Practice Experienced a BEC; Notified Client/s

▶ Facts

- ▶ Family law firm of about 5 attorneys handled Wills, Trusts, Estates.
- ▶ The attorney responsible primarily for Estates work observed mailbox rules that she did not set. The on-staff IT person (who was also the receptionist) suspected that a BEC occurred.

▶ Investigation

- ▶ Counsel for the Firm retained a Cyber Forensics Firm.
- ▶ Cyber Forensics investigation determined that three of five email accounts within the tenant were compromised; and that
- ▶ The threat actor likely gained access to at least one account by way of “credential stuffing.”

(Credential stuffing is the practice of using password credentials that were leaked through an unrelated service’s data breach.)

- ▶ The Firm certified that one compromised account could have contained Personally Identifiable Information and Financial Account information, but that there was substantially no likelihood that the other compromised accounts contained the same.

▶ Conclusion

- ▶ Firm notified the client whose personal and account information could have been compromised that a data incident occurred; and
- ▶ Firm provided client with credit monitoring service.

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B) BEC in a Real Estate Transaction Results in \$380,000 Loss

▶ Facts

- ▶ Buyers wired to sellers a substantial down payment on a home, approximately \$380,000.
- ▶ Practically just before closing, the parties discovered that the payment was made to a fraudulent bank account.

▶ Investigation

- ▶ A forensic investigation was substantially inconclusive.
- ▶ It was not clear whether the buyer's, seller's or attorneys' email accounts were compromised, or whether more than one parties' email accounts were compromised because all email correspondences appeared to be "true."
- ▶ (My theory: access to a domain registrar where

the subject domains were registered was compromised, and that enabled the threat actor to set up a second ESP that sent "true" emails through the true domains.)

▶ Conclusion

- ▶ Claim was made to at least one party's Cyber Liability carrier.
- ▶ Carrier attempted to settle – but the matter carried on...

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C) Law Firm Wired \$63,000 Settlement Payment to Fraudster; Client Sued

▶ Facts

- ▶ In the case of *Bile v. RREMC, LLC*, Civil Action No. 3:15cv051, 2016 U.S. Dist. LEXIS 113874 (E.D. Va. Aug. 24, 2016), a settlement between Bile and RREMC was reached, wherein Bile was to receive \$65,000 from RREMC to settle a claim. RREMC was to pay \$2,000 by check, and \$63,000 by wire.
- ▶ Bile's Counsel experienced a BEC, unknown to him at the time.
- ▶ RREMC's Counsel received an email from the fraudster posing as Bile's Counsel that issued instructions to wire \$63,000 to a certain Barclay's account in Bile's name. RREMC initiated the wire and wired \$63,000 to the fraudster, unknowingly.
- ▶ Bile's Counsel inquired to RREMC's Counsel re. status of payment – and this is when the parties discovered that Wire Fraud occurred.

▶ Claim

- ▶ Bile sued RREMC for specific performance (that it wire another \$63,000 to Bile).

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C) Law Firm Wired \$63,000 Settlement Payment to Fraudster; Client Sued

► Findings

- Bile's Counsel (BC) received an email from Bile sent through [_____@aoi.com](#). (Bile's true email address was [_____@aol.com](#)). The email directed BC to have the settlement funds be wired to a Barclay's account in Bile's name in London. BC asked Bile if he issued such direction, and Bile said "no." BC determined that this email was fraudulent, deleted it, but did not notify RREMC's Counsel (RC) of the incident.
- Bile became impatient with the receipt of his settlement and began "hounding" RC to accelerate payment, and threatened to take actions forbidden by the settlement agreement. RC agreed to initiate payment to Bile in part on fear that Bile might rescind the settlement agreement.
- RC received an email from BC's true email account (but sent by the fraudster) requesting that the consideration be wired to a Barclay's account. RC didn't question it because: it used BC's typical salutation and contained BC's typical typographical errors; reiterated urgent payment; email was consistent with a prior phone call that the parties would confirm wire instructions by email; the parties communicated by phone and email throughout the case.
- RC initiated the wire according to the instructions set forth in the BC email, to the fraudster's account.

C) Law Firm Wired \$63,000 Settlement Payment to Fraudster; Client Sued

► Outcome

- The Court found that Bile's Counsel (BC) failed to exercise ordinary care when it had actual knowledge of a fraudster's attempt to meddle with the transaction but failed to warn RREMC's Counsel (RC) that the transaction was apparently targeted by a fraudster.
- The Court also found that RC did not fail to exercise ordinary care because it had no indication that the transaction was targeted, and opined that since RC followed its procedures closely, RC would not have initiated the wire had it known that the transaction was being targeted by a fraudster.
- Therefore, RC was found to have performed when it paid out the first \$63,000 by wire – and is not liable to pay a second \$63,000 to plaintiff Bile.

Which Party Shoulders the Loss?

- ▶ In *Arrow Truck Sales, Inc. v. Top Quality Truck & Equipment, Inc.*, No. 8:14-cv-2052-T-30TGW, 2015 U.S. Dist. LEXIS 108823 (M.D. Fla. Aug. 18, 2015), a truck seller's (Top) and truck buyer's (Arrow) email accounts were both compromised, and furthermore, the fraudster established phony email accounts for both parties that visually appeared to be true.
- ▶ The fraudster's actions led to Arrow paying \$570,000 to the fraudster, and not to Top for 12 trucks.
- ▶ The Court recognized that "[u]nder the 'imposter rule,' the party who was in the best position to prevent the forgery by exercising reasonable care suffers the loss. See, e.g. UCC § 3-404(d); State Sec. Check Cashing, Inc. v. Am. Gen. Fin. Servs., 409 Md. 81, 972 A.2d 882 (Md. App. 2009)." *Arrow Truck Sales, Inc. v. Top Quality Truck & Equip., Inc.*, No. 8:14-cv-2052-T-30TGW, 2015 U.S. Dist. LEXIS 108823, at *15 (M.D. Fla. Aug. 18, 2015).
- ▶ And ruled that **the party that was in the best position to prevent the fraud but failed to attempt to verify the wire instructions failed to exercise reasonable care, and would be liable.**

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Trending Now: "Crimson Kingsnake" Impersonates Law Firms in BEC



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A business email compromise (BEC) group dubbed "Crimson Kingsnake" has recently been spotted impersonating well-known international law firms to trick recipients into approving overdue invoice payments.

As outlined in a technical write-up by cloud email security platform Abnormal, 92 malicious domains of 19 law firms and debt collection agencies across the US, UK and Australia have been identified and linked to the threat actor.

"The group, which we call Crimson Kingsnake, impersonates real attorneys, law firms, and debt recovery services to deceive accounting professionals into quickly paying bogus invoices," the company wrote.

"We've observed Crimson Kingsnake target companies throughout the United States, Europe, the Middle East, and Australia."

Abnormal also explained that, like most BEC gangs, the group is industry-agnostic, so they do not explicitly target companies in specific sectors.

<https://www.infosecurity-magazine.com/news/bec-crimson-kingsnake-92-malicious/>

Nov. 04, 2022

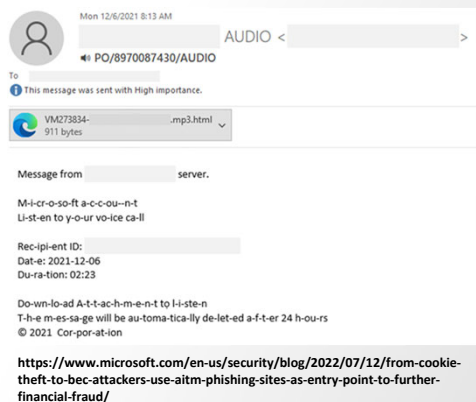
- ▶ The "Crimson Kingsnake" gang impersonates law firms and debt collectors across the US, UK, and Australia to collect on "unpaid invoices."

<https://www.infosecurity-magazine.com/news/bec-crimson-kingsnake-92-malicious/>

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Trending Now: AiTM Phishing Scheme Used to Bypass MFA

Email with Purported Voicemail Attached (below):



July 12, 2022

- ▶ Fraudsters can overcome 2FA by stealing the session cookie.
- ▶ Fraudster causes a user to access a legitimate website (such as Office 365) through the Fraudster's Proxy. When the user logs in to the legit website, the Fraudster is able to intercept the session cookie, and return to the legitimate website to access the user's account without logging in (because he has the session cookie that tells the site that authentication has occurred).
- ▶ One way that a fraudster redirects users through his proxy is by sending phishing emails with a "voicemail attached" that requires login to retrieve.

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III. What you can do to prevent a BEC and Wire Fraud

- ▶ Conduct Security Awareness Training. Security awareness keeps security issues "top of mind" and lowers "email fatigue."
- ▶ Stay out of financial transactions if you can. Let the payor and payee work directly to work out remittance plans. Then, confirm with the parties that the transaction was made.
- ▶ Verify wire instructions by phone if you have to be involved in the transaction, even if the wire instructions by email appear to be true.
- ▶ If you suspect that the transaction is being "targeted," immediately warn the other party by phone, not email. Remember: your emails might be seen and intercepted by a bad actor.
- ▶ Use a strong password that you only use for your email account. Don't use the same password across multiple services.
- ▶ Use a commercial ESP that caters to businesses. Business accounts will have additional tools that can be used to detect or prevent intrusions and prevent fraud. They often have better support, too.
- ▶ Implement 2FA / MFA. It's included in many services.
- ▶ Contact your IT professional about features that you might already have that could be enabled to help you recognize fraud. (Example: [EXTERNAL] banner. "You don't normally receive email from..." banner.)
- ▶ Also: buy insurance that covers wire fraud.

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IV. What to do if you're a victim

- ▶ Engage Cyber / Data Privacy Counsel to assist you.
- ▶ Initiate a claim to your cyber liability carrier.
- ▶ Immediately provide notice to the other party to prevent further fraudulent transactions.
- ▶ Immediately contact the financial institutions involved. They may be able to retrieve some of the mal-wired funds, or freeze what funds might be in the fraudster's account. Move quickly!
- ▶ Contact local law enforcement and make a police report. (Local law enforcement might refer you to another agency.)
- ▶ Contact the FBI's Internet Crime Center to report the incident.
- ▶ Assess your ethical responsibilities post-incident.

V. Ethical Responsibilities

- ▶ **ABA's Formal Opinion 483.** "[T]he American Bar Association Standing Committee on Ethics and Professional Responsibility reaffirm[ed] that lawyers have a duty to notify clients of a data breach...."
- ▶ **Notify Opposing Counsel.** "[A]ttorneys have 'an obligation to contact opposing counsel when and if they receive suspicious emails instructing them to wire settlement funds to a foreign country where such [a] request has never been made during the course of performance of the parties.'" Bile v. RREMC, LLC, Civil Action No. 3:15cv051, 2016 U.S. Dist. LEXIS 113874, at *34 (E.D. Va. Aug. 24, 2016).
- ▶ **Data Privacy Laws & Contractual Obligations.** State and federal data privacy laws may also apply that require that a data incident that involved personal information. Furthermore, notice may be required pursuant to a contract.



Questions & Comments



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