

Partner David Greenwald Discusses Cyber Breach Response in *The Circuit Rider*

Publications

November 18, 2025
By: David Greenwald

In an article for *The Circuit Rider*, Partner David Greenwald discusses the challenge companies face in preserving attorney-client privilege and work product protections regarding the work of cyber breach consultants during data breach investigations. Since 2015, courts have compelled disclosure of cyber consultant materials in nine out of twelve cases discussed in the article. The most salient difference is that the companies that were able to protect privilege established two separate work streams, one to support the work of counsel, and one to support identifying, scoping and remediating the source of the breach.

David acknowledges that incurring the additional cost and siloing off one of the workstreams from the business of correcting the breach “may seem inconceivable and counterintuitive to corporate decision makers” in the midst of a crisis. David also notes that while it may be understandable for a company not to prioritize maintaining privilege during a crisis, breach litigation may continue for years after remediation is complete, and companies may ultimately regret not taking more proactive steps to preserve this valuable corporate asset.

“The attorney-client privilege, which is owned by the company, is a corporate asset that a company may choose to impair in favor of urgent business needs,” said David. “However, yielding privilege protection in a crisis – though practical under the circumstances – may not always be the result of careful consideration.”

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David is an accomplished trial lawyer, representing clients facing complex, high-value disputes and corporate crises. He has tried cases in federal and state courts, arbitrated cases in the United States and Europe, and conducted criminal and civil internal investigations on three continents. *He is a co-author of Testimonial Privileges (West 2025), and co-editor of Protecting Confidential Legal information: a handbook for analyzing issues under the attorney-Client Privilege and Work Product Doctrine, (Jenner & Block 2023).* Mr. Greenwald is a frequent speaker on topics relating to cross-

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