

Keynote Speaker

Jerome Mayne

Former Mortgage Broker

Ethics & Fraud Defined – Your Professional Ethical Involvement

❖ Ethics & Fraud Defined

- Misrepresentation
- Constructive knowledge
- Fraud and material misrepresentation
- Conspiracy
- Investigation

- Your Professional Ethical Involvement
 - Company policies
 - Responses
 - Ethical Choices
- Typical Path – From Observer to Felon
 - Lifeline
 - Parallel nature of concurrent events
 - Investigation
 - Freedoms of US Prosecutor's discovery and subpoena procedures
 - Post indictment
 - Psychological factors

- Fraudster /Family Man
- Realities of indictment and Pre-trial
- FBI investigation
- US Marshal and FBI
- Federal Court
- Career after indictment
- Mental state of mind
- Plea
- Prison
- Inside
- Release



Professional Liability Exposures – Real Estate

PANELISTS

Damian Arguello

Moderator/Policyholder Perspective

**Policyholder Insurance/Coverage attorney/PLUS Committee Member, Colorado Insurance
Law Center**

Cherami Ball Costigan

Defense Counsel Perspective

Other Real Estate Professional Liability defense attorney

Kevin Healey

**Financial Services Broker Specializing in Management and Professional Liability
Vice President, AmWINS Brokerage of Georgia (an AmWINS Group Company)**

Rob Arndt

**Insured Real Estate Professional
Forum Real Estate**

- Colorado-Specific Misrepresentation/Omissions
 - Oil & Gas Operations- Neighborhood example. Mineral and water rights
 - Marijuana Usage and necessary disclosures
 - Flooding or Leaks/Nondisclosure or misrepresentation of flood zones
- *Gibbons v. Ludlow*, 304 P.3d 239 (Colo. 2013)
 - What duty does the broker/agent have?
 - What is the standard of proof for broker/agents now?
 - Is this standard applicable to other real estate professionals?
- Trends affecting brokers/agents
 - Branching out into other real estate related services like property management, construction management and development
 - Claims trends- Misrepresentation, breach of contract, environmental issues, zoning interpretation, easements
 - Flat-fee arrangements- FSBO and other alternatives
 - Zillow, etc.

- How do the new Colorado regulations affect the process of insuring PMs?
- Shifting risk to property manager from owner/association
- Ever-increasing technical knowledge demands needed to manage complex building systems- Hi Tech, Solar, Wind
- Expanding tenant needs and expectations
- Increasing number of non-traditional property management duties. Property Management vs Construction management
- “Trolling” lawsuits for ADA violations
- Claims trends- wrongful eviction, discrimination, failure to secure premises

- Please discuss the increasing integration of contractors and design professionals in the same organization, and the effect on insurability and pricing.
- What are the claim trends for this profession?
 - Diversified Firm vs Specialized Firm
 - Technology role in design
 - Pollution
 - Cost overruns/Delays

- Is the fast-paced Denver market causing an increase in claims, especially concerning title examination or documentation issues?
- Discuss the professional exposure related to data breaches
- Attorney as title agent – problems with lawyer malpractice insurance – what’s happening with foreclosure cases?
- What common exclusions or coverage issues arise?
 - Broadly worded customer funds exclusion
 - Lower retentions required by state laws

- Involved in multiple aspects of projects such as raising capital, land acquisition, construction, property management, construction management and agent broker
- Claims issues:
 - Insured vs insured issues
 - Negligent management, coordination and supervision of design and construction
 - Negligent preparation, transmittal, and awarding of design and construction bid packages
 - Limiting site access
 - Failure to coordinate activities of multiple contractors onsite
 - Issuing defective contract documents that failed to properly sequence construction activities
 - Failure to accurately disclose site conditions

- Certain real estate entities could also have professional liability exposures based on the following:
 - General Partner/ Managing Member Structures
 - Likely not majority owners, but will have management control
 - Normally a contract exists between GP and limited partner/ investor – specific professional services likely listed (beware of a D & O policy with an E & O exclusion)
 - Fund Management
 - Doesn't have to be a formal fund for this exposure to exist
 - Raising funds from high net worth individual/ 'golf club buddies' – what representations are made?
 - 'Selection, Oversight and Management' of 3rd parties
 - Many real estate entities outsource a great deal of services. If one of those entities causes a loss that impacts investors how long before the 3rd parties policy responds?
- Insurance solutions exists for these entities – blended D & O and E & O policies



Directors & Officers– Real Estate Panel





Directors & Officers– Real Estate Panel

Eric Zehnpfening
Moderator

AVP – Philadelphia Insurance Companies / PLUS Committee Member

PANELISTS

Rachael Owens
Senior Vice President & Department Manager
Lockton Companies, LLC

Joe Robuck
Senior Vice President, Worldwide Facilities, Inc.

Michael Chu
Vice President & National Practice Leader (REITs)
Arch Insurance Group

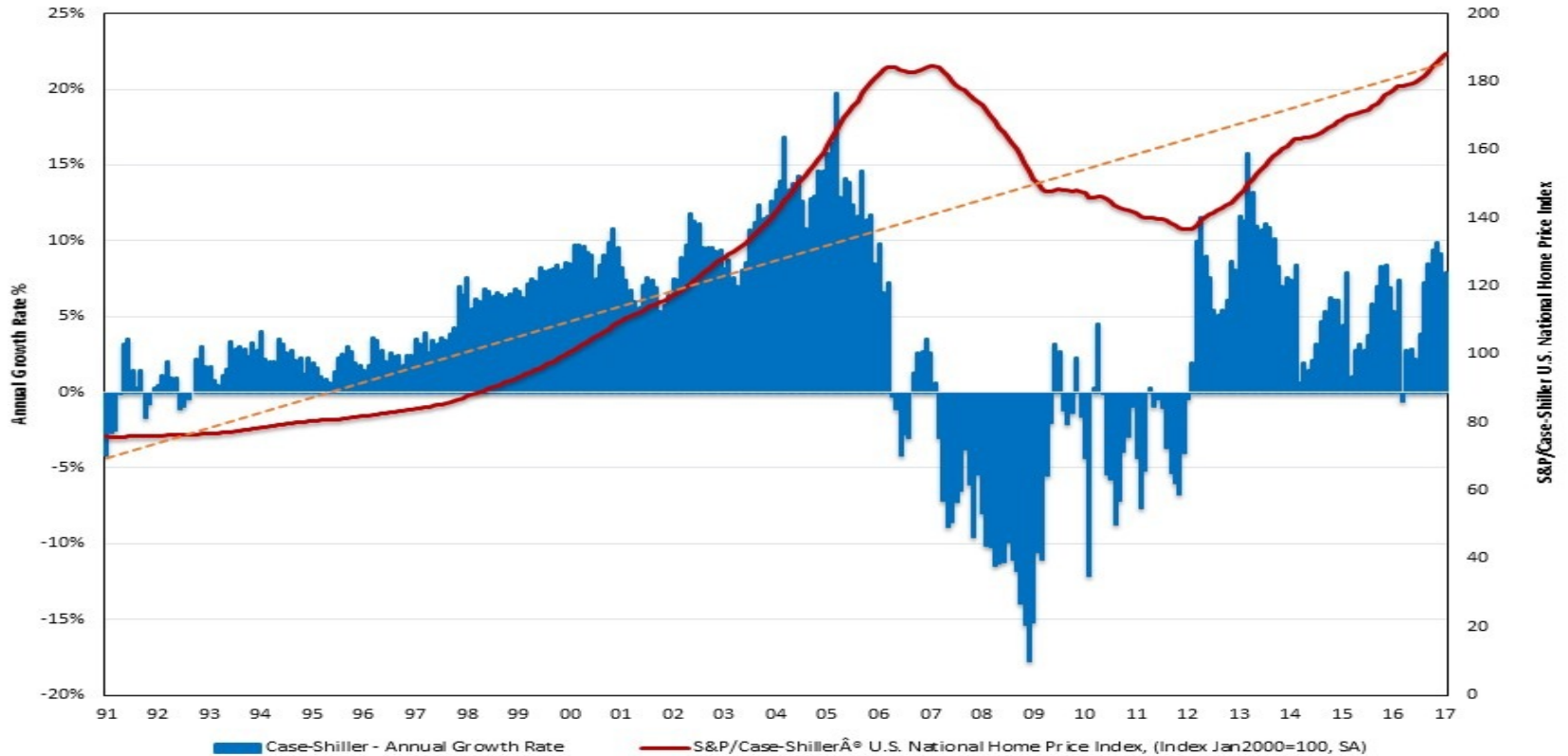
Dan C. Nelson
Partner & Co-Chair, Data Security and Privacy Practice Group –
Armstrong Teasdale LLP



Directors & Officers– Real Estate Panel

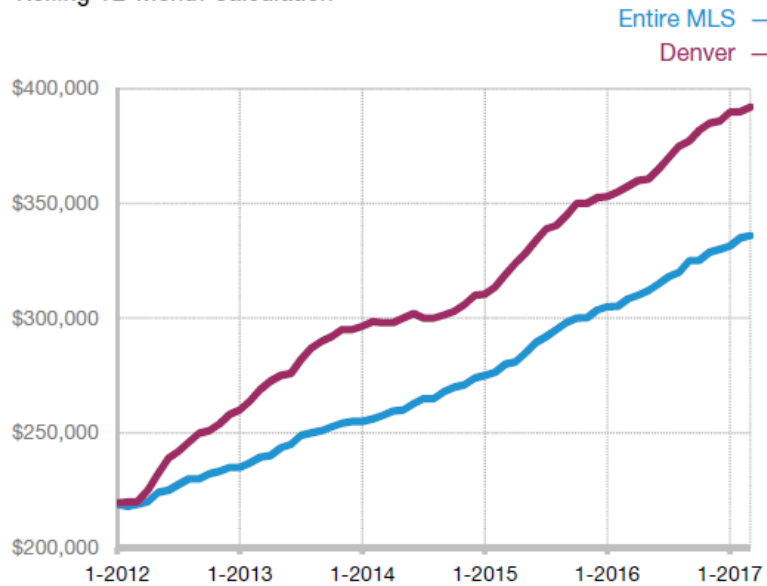
Real Estate Cycles & Management Liability

Figure 1. S&P/Case-Shiller U.S. National Home Price Index

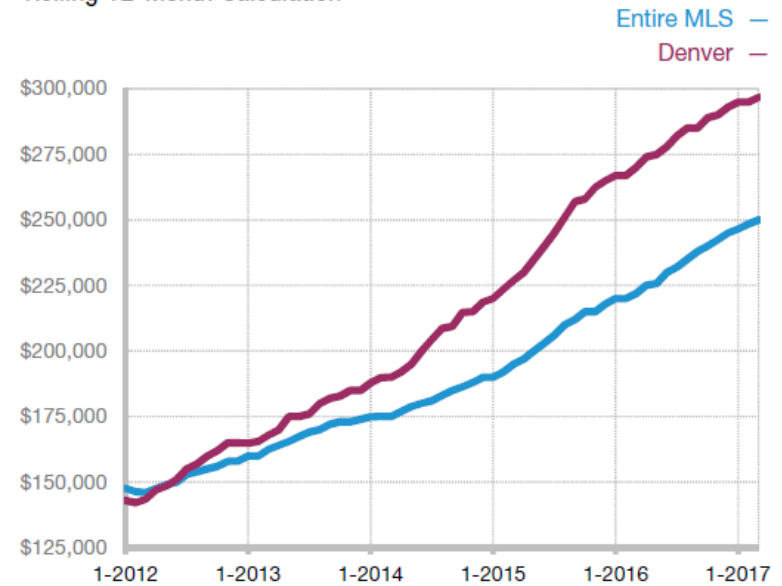




Median Sales Price – Single Family
Rolling 12-Month Calculation



Median Sales Price – Townhouse-Condo
Rolling 12-Month Calculation



Current as of April 5, 2017. All data from REcolorado®. Powered by ShowingTime 10K.



State of Real Estate Market - Denver

Local Market Update for March 2017

A Research Tool Provided by the Colorado Association of REALTORS®



DENVER METRO
ASSOCIATION OF REALTORS®

Denver

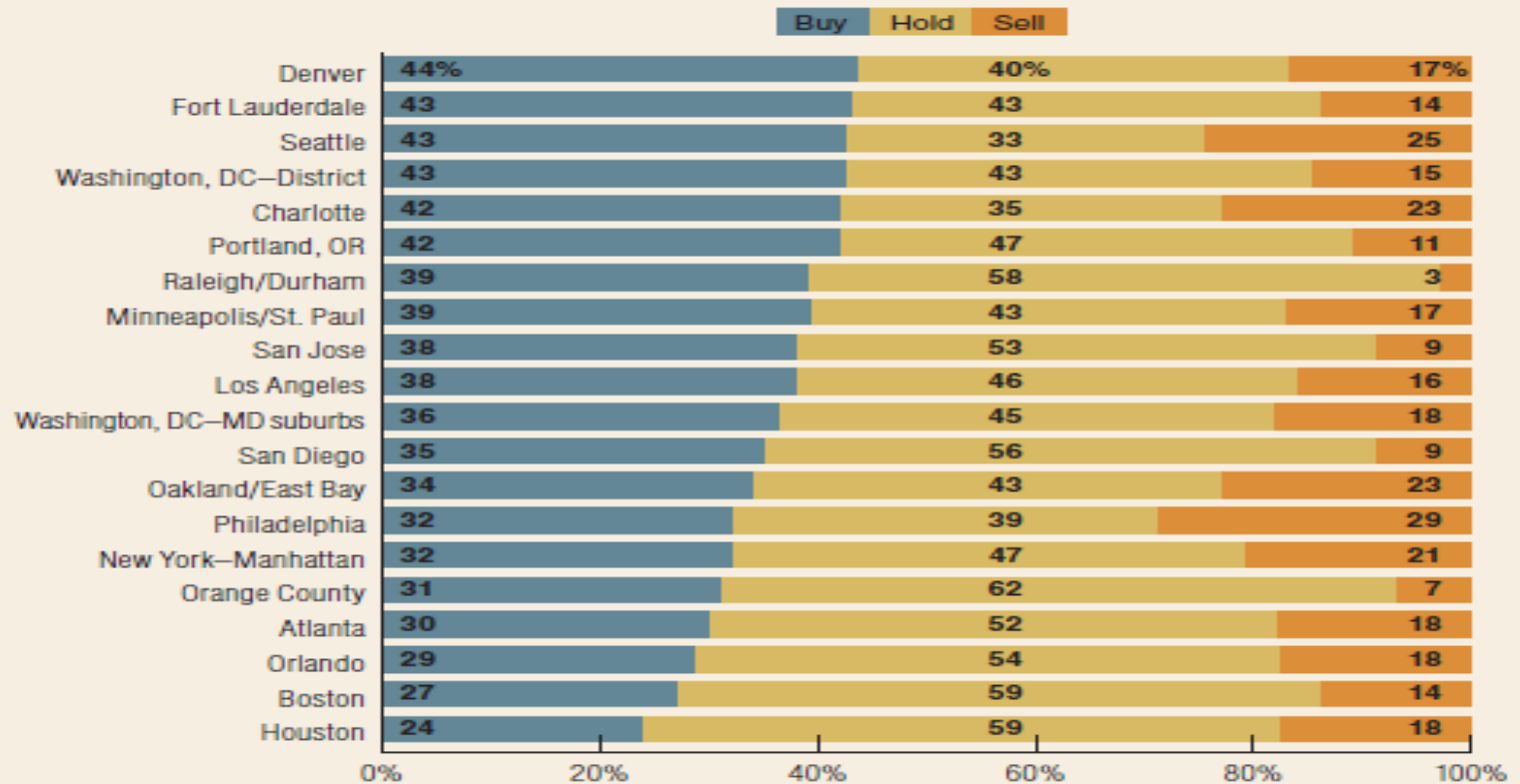
Single Family	March			Year to Date		
	2016	2017	Percent Change from Previous Year	Thru 03-2016	Thru 03-2017	Percent Change from Previous Year
Key Metrics						
Inventory of Active Listings	889	663	- 25.4%	--	--	--
Under Contract	784	822	+ 4.8%	1,975	1,956	- 1.0%
New Listings	858	970	+ 13.1%	2,112	2,179	+ 3.2%
Sold Listings	679	661	- 2.7%	1,669	1,586	- 5.0%
Days on Market Until Sale	27	22	- 18.5%	33	27	- 18.2%
Median Sales Price*	\$401,500	\$412,000	+ 2.6%	\$360,000	\$393,500	+ 9.3%
Average Sales Price*	\$453,072	\$490,367	+ 8.2%	\$442,250	\$477,026	+ 7.9%
Percent of List Price Received*	100.0%	100.7%	+ 0.7%	99.4%	99.9%	+ 0.5%

* Does not account for seller concessions and/or down payment assistance. | Activity for one month can sometimes look extreme due to small sample size.

Townhouse-Condo	March			Year to Date		
	2016	2017	Percent Change from Previous Year	Thru 03-2016	Thru 03-2017	Percent Change from Previous Year
Key Metrics						
Inventory of Active Listings	731	659	- 9.8%	--	--	--
Under Contract	499	589	+ 18.0%	1,312	1,536	+ 17.1%
New Listings	625	668	+ 6.9%	1,530	1,682	+ 9.9%
Sold Listings	451	498	+ 10.4%	1,114	1,212	+ 8.8%
Days on Market Until Sale	28	29	+ 3.6%	31	31	0.0%
Median Sales Price*	\$293,000	\$326,750	+ 11.5%	\$281,650	\$300,000	+ 6.5%
Average Sales Price*	\$355,432	\$393,701	+ 10.8%	\$359,758	\$370,417	+ 3.0%
Percent of List Price Received*	100.5%	100.0%	- 0.5%	99.8%	99.7%	- 0.1%

* Does not account for seller concessions and/or down payment assistance. | Activity for one month can sometimes look extreme due to small sample size.

Exhibit 3-7 U.S. Retail Property Buy/Hold/Sell Recommendations



Source: *Emerging Trends in Real Estate 2017* survey.

Note: Cities listed are the top 20 rated for investment in the retail sector; in this exhibit, cities are ordered according to the percentage of "buy" recommendations.



Directors & Officers– Real Estate Panel

Ownership Structures / Types of Exposures

- Real Estate Investment Trusts
- Partnerships / Limited Partnerships / Funds
- Tax Credit Properties / Low Income Housing
- Family Owned
- Joint Ventures
- Separate Accounts
- Crowdfunding
- Mortgage Bankers / Brokers
- Real Estate Agents / Brokers
- Regulatory Exposures



Directors & Officers– Real Estate Panel

Market Capacity & Coverage Considerations



Directors & Officers– Real Estate Panel

D&O Claim Trends



Directors & Officers– Real Estate Panel

D&O Related Exposures from Cyber Events

- Ineffective or negligent corporate governance and board oversight
- Derivative Shareholder Suits
- Policy considerations (All Insured or Entity Only Cyber Exclusions)



Directors & Officers– Real Estate Panel

EPL Exposures & Real Estate

- Fair Housing Discrimination (Tenant Discrimination)
- Redlining
- W&H

- Don't forget to stamp and leave your CE/CLE paperwork
- Watch for future events
- Adjourn to happy hour at Slattery's Irish Pub



Damian Arguello

Rob Arndt

Cherami Ball Costigan

Michael Chu

Kevin Healey

Jerome Mayne

Dan Nelson

Rachael Owens

Joe Robuck

Eric Zehnpfennig



Damian Arguello

Damian J. Arguello is the founding principal of Colorado Insurance Law Center, a law firm dedicated to representing policyholders in insurance coverage matters. Damian a former claims adjuster, claims manager, and insurance brokerage errors & omissions claims manager.

His practice includes assisting in the negotiation of policy provisions, drafting contractual risk transfer provisions and insurance requirements, confirming compliance with contractual insurance requirements, and representing policyholders in coverage disputes and litigation.

He is a Colorado native and speaks frequently on insurance issues to industry groups, professional associations, and bar associations.

As the Controller of Forum Real Estate Group, Rob is responsible for month end process and controls, financial reporting, financial analysis and treasury functions.

Prior to joining Forum Real Estate Group, Rob served as Controller for firms in the Commercial Real Estate, Wealth Management and Manufacturing sectors. Most recently, Rob was the controller for a private equity firm focused on creating investor value in the alternative and renewable energy space.

Rob graduated from Colorado State University with a BS in accounting and from Regis University with an MBA. Rob is also a Certified Public Accountant.

Born and raised in Colorado, Rob enjoys spending time with his family, road biking, playing soccer, and volunteering his time coaching youth competitive soccer.



Cherami Ball Costigan

Cherami Ball Costigan joined Balaban Levinson Costigan & Wasilik, P.C in May, 2005. She received her Juris Doctor in January, 2003 from Thomas M. Cooley Law School in Lansing, Michigan.

Ms. Ball Costigan was admitted to practice law in Colorado in May 2003. She is also licensed in the United States District Court for the District of Colorado and holds the prestigious AV® Preeminent™ rating from Martindale-Hubbell.

Prior to joining Balaban Levinson Costigan & Wasilik, P.C. her practice primarily involved Domestic Relations matters. Ms. Ball Costigan became a shareholder in October, 2010.



Michael D. Chu

Michael joined Arch Insurance Group (Arch) in June of 2009. He currently serves as the National Practice Leader for REITs and manages the NAREIT D&O program through which Arch is the endorsed D&O insurance carrier for members of NAREIT®.

Michael is also the West regional manager for the Large Commercial Group at Arch which underwrites Directors & Officers Liability (D&O), Fiduciary Liability, Employment Practices Liability (EPL) and Crime Insurance for all public and private commercial companies with over \$500 million in revenue.

Prior to joining Arch, Michael spent six years at Hartford Financial Products, most recently as an Underwriting Manager in the Commercial D&O Department, with a primary focus on the NAREIT D&O program.

Michael has been involved with the NAREIT D&O program since 2003 and has presented at past NAREIT Law & Accounting Conferences. Michael is a graduate of Vassar College with a B.A. in Economics.



Kevin Healey

Kevin is a Vice President with AmWINS Group working in their Professional Risk Practice specializing in A&E/Contractors, Real Estate and Tech/Cyber E&O business. Kevin helped develop an exclusive AmWINS real estate developer E&O program that launched the summer of 2016.

He received his MBA from Georgia State University majoring in Finance and completed his undergraduate degree in International Business at the University of Georgia's Terry College of Business.

Prior to joining AmWINS in January of 2008, Kevin was a Senior Underwriter for AIG's Executive Liability underwriting division from 2004-2008. His areas of focus within management liability were private company and publicly traded micro-cap firms.

For over 2 years his name was, Federal Inmate Number 08657-041. Before that, Jerome Mayne was respected in the financial community and the father of two young boys.

In 1994, Jerome Mayne, a new father, husband and homeowner, held a lower level finance position at Norwest in St. Paul Minnesota. Over the course of several months, he made a series of bad ethical decisions that perpetuated his involvement in a fraud scheme initiated by a group of investors. For fear he was getting in too deep he eventually broke ties with the group. For fear he would get fired, he quit his job and set out on his own.

Over the course of the next four years Jerome built two corporations, had 10 employees and, from good old fashioned hard work, was financially sound. In December of 1998 he was out to lunch with a business associate and was arrested by the FBI for his involvement in the fraud scheme in 1994.

Through his presentation, he tells the story of how his unethical decisions got him caught up in a fraud conspiracy that led to his complete financial and psychological collapse. He specifically addresses unethical behaviors that occur in the “business as usual” culture that exists in corporate America today.

Law Practice

Dan is a rare breed: He's both a commercial litigator and a privacy and data security lawyer. And what makes him even more unique is Dan is among the few U.S. attorneys to hold the title of Certified Ethical Hacker (CEH). That means he has been trained to break into computers, but for the right reasons.

Privacy & Data Security

Dan's combined interest in technology and the desire to help clients protect their privacy and sensitive data motivated him to take the unusual step of becoming what's known as a "white hat" hacker. Through this arduous training, Dan learned how to break into protected systems and networks to test and assess their security. Because of this, Dan offers clients a perspective that few lawyers possess. In addition to his ethical hacking credential, Dan is a Certified Information Privacy Professional (CIPP/US). This credential means that Dan knows privacy laws and regulations and how to apply them. Dan's special training and experience enhances his ability to help clients protect against and prepare for data breaches and other cybersecurity incidents. He assists clients in the creation, implementation and enforcement of privacy and security policies and data breach plans. This guidance includes counseling on appropriate cybersecurity insurance coverage and risk assessment engagements. He also assists businesses with understanding their duties to retain and protect sensitive information, including privacy and document retention requirements.

In the event of a cyberattack, Dan serves as a data breach/cyber incident coach. He advises on the immediate steps needed to contain, investigate and remediate the incident. Dan's knowledge of both the technical details of likely breaches and the attendant legal and business impacts enables him to provide clients the information needed from both a technical and legal standpoint.

Rachael is the Senior Vice President, Department Manager of Financial Services of Lockton clients for Denver. She is responsible for the management, program design, marketing, servicing, and coordination of executive liability coverages, including directors and officers, employment practices, fiduciary liability, crime, cyber, and miscellaneous professional liability product lines.

Prior to her current responsibilities she was the Regional Underwriter Director for St. Paul Companies.

Rachael has a B.S. Finance from Indiana University, Bloomington, IN and an M.B.A., Strategic Management: Carlson School of Business, University of Minnesota.



Joe Robuck

Joe is Senior Vice President and wholesale broker at Worldwide Facilities in Los Angeles where he specializes in the financial lines of insurance including Directors and Officers Liability, Employment Practices Liability, Fiduciary Liability, Crime Insurance, Professional Liability and Cyber Liability.

Joe manages a team of professionals that assist their retail clients in the placement of these policies for their clients. Joe has been with Worldwide for the last 13 years. Prior to joining Worldwide, Joe spent the early part of his career in technology.

Joe is a frequent speaker, has published a number of articles and is a past chairperson of the Los Angeles Chapter of the Professional Liability Underwriting Society. Joe received his Bachelor's degree in Computer Science from York University.



Eric Zehnpfennig

Eric manages a team of Management Liability, Professional Liability and Cyber Liability underwriters handling all of Philadelphia Insurance Companies' West Coast operations. Eric has been in the industry over 11 years and is a current member of the PLUS Southwest Chapter Committee.