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M E M O R A N D U M

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To Our Clients and Friends

Re: Georgia and Arkansas Security Breach Laws

Georgia and Arkansas have recently enacted legislation requiring notification to state residents of certain unauthorized disclosures of their personal information.

THE GEORGIA ACT (SB 230)

The Georgia Act requires an “information broker” that maintains computerized data to give notice of any breach of the security of the system to any Georgia resident whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The notice must be given in the most expedient time possible and without unreasonable delay, unless law enforcement determines that the notice will compromise a criminal investigation.

An “information broker” is a person who, for monetary fees or dues, engages in the business of collecting, assembling, evaluating, compiling, reporting, transmitting, transferring or communicating information concerning individuals for the primary purpose of furnishing personal information to nonaffiliated third parties.

“Personal information” under the Georgia Act includes an individual’s name in combination with one or more of the following data elements when either the name or data elements are not encrypted or redacted:

- Social Security number;
- Driver’s license or state identification card number;

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- Account number, credit card number or debit card number if the number could be used without additional identifying information, access codes or passwords;
- Account passwords or personal identification numbers or other access codes; or
- Any of these data elements when not in connection with a person's name if the information would be sufficient to perform or attempt identity theft against the person whose name was compromised.

An information broker may provide substitute notice via e-mail, conspicuous posting on the information broker's website and notification to major state-wide media if the cost of providing the notice would exceed \$250,000, there are more than 500,000 affected individuals, or the information broker does not have enough information to provide written or electronic notice.

THE ARKANSAS ACT (SB 1167)

The Arkansas Act requires that any person or business that acquires, owns or licenses computerized data that includes personal information disclose a security breach of the system to any Arkansas resident whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. Notice is not required if after a reasonable investigation the person or business determines there is no reasonable likelihood of harm to customers.

Notice must be given in the most expedient time and manner possible and without reasonable delay, consistent with the needs of law enforcement if the notice will impede a criminal investigation or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the system.

The Arkansas Act defines "personal information" as an individual's name in combination with one or more of the following data elements when either the name or the data element is not encrypted or redacted:

- Social Security number;
- Driver's license or state identification card number;
- Account number, credit card number, or debit card number in combination with any required security code, access code, or password that would permit access to an individual's financial account; or
- Medical information.

The Arkansas Act exempts persons regulated by state or federal law that provide "greater protection" to personal information and at least as thorough

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disclosure requirements for breaches of personal information as under the Arkansas Act.

Copies of the Georgia and Arkansas Acts can be found on our web site at http://www.schwartzandballen.com/whats_new.html.

If you have any questions, please call Gilbert Schwartz, Robert Ballen or Tom Fox at (202) 776-0700.