



Jablonski, John J.

Position: Managing Partner

Chair: Cyber, Technology and Social Media and Toxic Tort and Environmental

Co-Chair: Employment & Labor Law

Contact

Phone: (716) 313-2082

Fax: (646) 350-1901

Email: jjablonski@gerberciano.com

Mailing Address

P.O. Box 1060, Buffalo, New York 14201

Location

Buffalo, New York

Practice Areas

- [Toxic Tort and Environmental](#)
- [Cyber, Technology and Social Media](#)
- [Transportation](#)
- [Employment and Labor Law](#)
- [Insurance Solutions](#)
- [Business Law](#)
- [Product Liability, Fire and Life Sciences](#)
- [Worker's Compensation](#)

Admissions

New York, U.S. District Court for the Western District of New York, U.S. District Court for the Eastern District of New York, U.S. District Court for the Northern District of New York, U.S. Court of Appeals, Second Circuit



Biography

John is the firm's Managing Partner. He chairs the firm's Cyber, Technology and Social Media Practice Group and participates in the firm's Transportation Group. John focuses on helping clients develop and use artificial intelligence tools (AI), including governance, policies and procedures, contracting and internal protocols to mitigate exposure from risks associated with the use of AI tools.

John's vision for delivering legal services through innovation, efficiency and cost certainty is a driving force behind the firm's business model. He has over 25 years of experience advising clients on enterprise-wide initiatives involving data privacy and security, information governance, IT governance, litigation readiness, privacy and security of enterprise technology, applications and cloud-based systems (including click-wrap and browse-wrap agreements, terms and conditions, master services, service level and software licensing agreements and website terms of use and privacy statements), matter management software, enterprise-wide electronic evidence preservation and e-discovery solutions. John's passion for technology, process improvement and governance makes him uniquely qualified to solve complex legal problems at the intersection of security, privacy, AI and information governance.

John is a jury-tested litigator, taking cases to verdict in state and federal courts. He has multiple trial and summary judgment wins on multi-million-dollar exposures. He represents major Class I railroads on toxic tort, asbestos and personal injury exposures as well as commercial and real property disputes. He has handled trucking litigation during his career and currently represents a Fortune 500 trucking and logistics company in commercial, technology, AI, data security and privacy issues. John is also an accomplished commercial litigator in business-to-business disputes, commercial real estate and leasing disputes and proceedings in bankruptcy court. Clients seek out his counsel for large-scale environmental loss, including oil spill claims under New York's Navigation Law, NYDEC regulatory violations, NYDEC remediation, and hazardous waste site litigation under CERCLA.

John is a frequent author, speaker and national authority on information governance, data privacy, data security, data breach response, litigation holds, preservation of evidence and e-discovery in the United States. John has helped clients develop AI governance policies, develop data breach response plans, conduct table-top exercises, and has been involved in hundreds of incident responses. John develops and manages e-discovery strategy, including participation in Rule 26(f) and Rule 16 conferences, negotiating protective orders, negotiating e-discovery protocols, defense of 30(b)(6) depositions and motion practice defending preservation, collection, privilege and production processes. He is the editor and author of the leading text on e-discovery and legal holds (7Steps for Legal Holds of ESI and Other Documents).



Education

- State University of New York at Buffalo Law School, J.D., 1993
- Canisius College, ROTC Commission, 2d Lieutenant, U.S. Army Reserve, 1989
- State University of New York College at Buffalo, B.S. (Criminal Justice), 1989

Honors

- *Best Lawyers in America*, 2013–2027, Commercial Litigation, Privacy and Data Security, and Railroad Law
- *Business First's*, Who's Who in the Law
- *Upstate New York Super Lawyers*, 2008-2026
- Alfred W. Cortese, Jr. Award (for exceptional scholarship and advocacy in support of ESI amendments to the Federal Rules of Civil Procedure, effective December 1, 2015), Lawyers for Civil Justice (2014)
- Editor, *Best Practices Guide for Legal Holds*, Arkfeld on E-Discovery and Evidence, Law Partner Publishing and LexisNexis, 2012-2013
- Author and Editor, *7 Steps for Legal Holds of ESI and Other Documents* (ARMA 2009)

Professional Leadership

- Defense Research Institute
- Past Program Chair, Data Breach and Cyber Liability Seminar
- Past Chair, Data Management and Security Committee
- Past Chair, E-Discovery Committee
- Past Program Chair, E-Discovery Seminar
- Presenter, Multiple DRI Seminars



- International Association of Privacy Professionals:
 - Member and Privacy Bar Member
- ARMA International Association:
 - Active Member
 - Past President, WNY Chapter
 - Candidate, Board of Directors
- ISACA: Member
- Project Management Institute: Member
- Law Technology News: Former Publications Advisory Board Member
- National Association of Railroad Trial Counsel
 - Past President, North East Region
 - Past Chair, E-Discovery and Environmental Law Committees
 - Current Member, Educational Advisory Committee
- New York State Bar Association
 - Past Member, CPLR Committee
- American Bar Association

Representative Matters

Continental Connection (Colgan) Flight 3407

John was a key member and leader of e-discovery issues arising from the February 12, 2009 crash of Continental Connection Flight 3407 in Clarence Center, New York.

Data Breach Response

John was contacted following a data breach involving 158,000 potentially affected persons resident in all 50 states and Puerto Rico. John took over coordination of the response from another law firm. John was able to reduce the client's breach response costs by \$150,000 over initial notice and reporting estimates through coaching of public relations and customer messaging; focusing the computer forensics team on evidence of access and acquisition; and analysis of nuances in all applicable data breach notification laws.



Governance Project

John led a full day workshop to explore the strategic data security vision of a multi-billion-dollar web-based services company and providing legal support for a multi-year project to develop an IT security and governance maturity model, which involved participation by the CEO, CIO, CISO, data security team members and an internal audit team.

Information Governance Project

A U.S. based Fortune 500 manufacturer with worldwide facilities and strategic partners came to John for advice on moving to the cloud to share information with its employees and strategic partners, worldwide. John worked with the project team to develop legal safeguards, processes for managing access to the environment, preservation for litigation business processes and governance of documents stored in the environment.

Information Governance Project

A U.S. based company with over 10,000 employees wanted to implement Microsoft's Yammer™ for its employees. John developed an information governance strategy for the environment, including providing a legal opinion in support of information management and preservation processes for implementing legal holds on relevant information within the environment.

Information Governance Project

A nationwide owner of nearly 100 long-term care facilities came to John to develop and implement a comprehensive information governance strategy, including the development of information management policies and procedures, a records retention schedule, legal hold business process, roll-out and implementation plan. John also conducted an initial round of training that was recorded and is now shown to all new employees.

Kniery v. Cottrell, 59 AD3d 1060, leave denied 61 A.D.3d 1439

John obtained a unanimous reversal and dismissal of this wrongful death action based on products liability. By persuading the appellate court to apply the correct (yet complex) choice of law analysis, the court dismissed the lawsuit due to expiration of a ten-year statute of repose of an adjoining state, even though decedent was a New York resident.



Frame v. CSX Transportation, Supreme Court, New York

John won summary judgment and dismissal of the claim of a dirt bike rider that struck a wire strung between two poles, arguing the application of New York's Recreational Use Statute (General Obligations Law § 9-103) (landowner is immune from liability for third-party's use of land for recreation) and overcoming a known exception to the rule that permits a suit to proceed if a landowner knew or should have known that injury could result by stringing a wire or chain across a pathway.

Humphrey v. Riley, US District Court Northern District of New York

Humphrey's complaint alleged several causes of action against John's client stemming from his deceased wife's use of the Mirena intrauterine device (IUD), a contraceptive device designed and sold by Bayer. Specifically, it was alleged that use of the Mirena IUD was "the cause of or conduit for" several medical ailments that she developed, including "a Beta Hemolytic Strep Group A ('GAS') infection, pelvic inflammatory disease, pelvic abscess and toxic shock syndrome." John convinced plaintiff to discontinue the action against the medical device manufacturer prior to dispositive motion practice, including convincing the hospital co-defendants to discontinue all cross claims.

Amherst Station v. General Wireless Operations, Inc., US District Court for the Western District of New York

RadioShack Corporation ("RadioShack") filed for voluntary debtor relief pursuant to Chapter 11 Bankruptcy of Title 11. General Wireless emerged as the Stalking Horse purchaser of hundreds of RadioShack leased properties nationwide. General Wireless refused to vacate the premises owned by John's client, Amherst Station (managed by Phillips Edison Co.). Amherst Station commenced a summary eviction proceeding against General Wireless/RadioShack to recover the premises, which was ultimately surrendered during litigation.

Kendall v. Aegis Engineering Services, Inc., US District Court Northern District of New York

Plaintiffs' claim arose out of an incident when local police dispersed tear gas into their house. Following the incident, plaintiffs filed an insurance claim with their insurer, Amica Mutual Insurance Co., to remediate the building of tear gas remnants. Amica sought out the services of Aegis Engineering Co., an environmental engineering company, to provide Amica with further information on the remediation process. Specifically, Amica asked Aegis to coordinate with the remediation company chosen by plaintiffs to inspect the loss, assess the scope of environmental remediation, determine habitability and report accordingly. John successfully defended the claim against the engineering company for its handling of the matter, including obtaining summary judgment dismissing the claim.



***Sero v. CSX Transportation*, US District Court for the Western District of New York**

Plaintiff was injured while an employee for Davey Tree Expert Company (“Davey Tree”). Davey Tree was under contract with a Class I Railroad to clean up an abandoned railroad yard in Rochester, New York. Plaintiff incurred injuries when he fell into a hole while working in the abandoned railroad yard. The issue before the Court was whether the contract between the railroad and Davey Tree required the contractor to obtain insurance for the railroad, and whether the contract required Davey Tree to indemnify and hold the railroad harmless for the injury to the plaintiff. John ensured that liability was passed from the railroad to Davey Tree.

***In Re Mirena IUD Products Liability Litigation*, US District Court for the Southern District of New York**

Hundreds of plaintiffs sued three related companies — Bayer Healthcare Pharmaceuticals, Inc., Bayer Pharma AG and Bayer OY (“Bayer”) — alleging that they were injured when Mirena, an intrauterine contraceptive device manufactured by them, perforated, became embedded in or migrated from their uteruses. These diversity cases were consolidated as part of a multi-district litigation (“MDL”). Plaintiffs brought claims alleging negligence, strict liability, manufacturing defect, design defect, failure to warn, breach of warranty (implied and express), negligent misrepresentation, fraud, and various state-specific statutory violations. John was selected by Bayer to act as state-wide counsel for all matters filed in state and federal court.

***Voom HD Holdings LLC v. Echostar Satellite LLC*, 93 AD3d 33**

John’s experience and national reputation as an expert in e-discovery was called on by Lawyers for Civil Justice to author and file an amicus brief in this multi-billion-dollar battle between two media companies. This case required the appellate court to determine the scope of a party’s preservation duties in the electronic discovery context, and the appropriate sanction for failure to preserve electronically stored information (ESI). This is the first time a New York intermediate appellate court addressed the issue of when the duty to preserve evidence was triggered. The court adopted the standard articulated in the Second Circuit, that once a party reasonably anticipates litigation, it must suspend its routine document retention/destruction policy and put in place a “litigation hold” to ensure the preservation of relevant documents.

***Bready and Harris v. CSX Transportation*, 19 NY3d 834**

Following a denial of summary judgment at the trial court level, John obtained reversal from an intermediate appeals court dismissing all claims and validation from New York’s highest court that his client did not breach a duty of care to the plaintiffs even under a higher duty imposed by the Federal Employers’ Liability Act.



McCabe v. CSX Transportation, 27 AD3d 1150

Following the trial court's erroneous dismissal of all contributory negligence claims against the railroad, John obtained a reversal at the appellate court.

Gehen v. Consolidated Rail Corporation, 289 AD2d 1026

John protected his clients against being forced to pay plaintiff's costs to attend four out-of-state depositions of corporate witnesses.

Community

- Past Member, Board of Directors, St. Joseph's Hospital Foundation
- Past President, Vice-President, Treasurer, Secretary and Captain, Buffalo Rugby Club
- Volunteer, Volunteer Lawyers Project
- Buffalo Public Interest Law Program, Summer Fellowship, awarded to develop a Homeless Task Force (pairing law students and lawyers to provide legal services at shelters and mobile food distribution trucks)
- First Lieutenant (Retired), United States Army Reserves

Presentations

- Presenter, "Judges, The Law and Guidance: Does 'Reasonableness' Provide Clarity," ING3NIOUS, Information Governance Retreat, Washington, D.C., June 26, 2017
- Presenter, "Data Privacy and Security for Professional Service Organizations", PICPA, May 24, 2017
- Co-Chair, Sixth Annual Cyber Liabilities Insurance ExecuSummit, Mohegan Sun, Connecticut, March 21–22, 2017
- Presenter, "Legislative and Enforcement Update," Cyber Liabilities Insurance ExecuSummit, March 22, 2017
- Presenter, "Getting to the Heart of Data Privacy and Security," The Information Governance Conference, October 12, 2016
- Presenter, "How to Form and Enforce Information Governance Policies," The Information Governance Conference, October 12, 2016



- Presenter, “Data Privacy Issues and Concerns with International Business,” USLAW Network/TELF A Cross Border Business and Transaction Exchange, September 28, 2016
- Presenter, “7 Reasonable Steps to Defend Litigation Holds Under the New Safe Harbor,” ARMA Live, September 25, 2016
- Co-Presenter, “ADA Website Accessibility: The Time Is Now,” Webinar, June 2, 2016
- Co-Chair, Fifth Annual Cyber Liabilities Insurance ExecuSummit, Mohegan Sun, Connecticut, April 19–20, 2016
- Presenter, “Legislative and Enforcement Update,” Cyber Liabilities Insurance ExecuSummit, April 20, 2016
- Panelist, “Is Your E-Discovery Program Safe from Hackers?” Lawyers for Civil Justice, New York, NY, December 3, 2015
- Presenter, “Point of Sale Litigation: Update on Cyber and Other Point of Sale Threats,” USLAW Network and Retail Hospitality Law Exchange, Dallas, TX, October 20, 2015
- Moderator, “Multiple Touchpoints of Data Breaches: The Role Chief Litigation Officers Play in Wearable Tech, Biometrics, Social Media, and More,” Consero Corporate Litigation Forum, Coral Gables, FL, October 5, 2015
- Presenter, “Putting the Cat Back in the Bag (Litigation of Data Breach and Trade Secret Lawsuits),” USLAW Fall Client Conference, Boston, MA, September 19, 2015
- Presenter, “Houston, We Have a Problem! (The Mechanics of Data and IP Breach),” USLAW Fall Client Conference, Boston, MA, September 19, 2015
- Presenter, “Risk Management in the Day-to-Day (Risk Management and Mitigation of Data and IP Breach),” USLAW Fall Client Conference, Boston, MA, September 18, 2015
- Presenter, “Best Practices in Data Breach Notification,” Navigating the Cybersecurity Storm Program, Pennsylvania Institute of CPAs, May 18, 2016
- Presenter, “Taking of Evidence: Data in the Cloud,” DRI International European Seminar, Zurich, Switzerland, April 23, 2015
- Program Chair and Presenter, Rolling Out the Plan (Implementation of a Data Security Strategy), Defense Research Institute Data Breach and Privacy Law Seminar: Cyber Security Strategies in a Digital Age, September 11-12, 2014



- Presenter, “Developing a Data Security Plan”, Defense Research Institute Data Breach and Privacy Law Seminar: Cyber Security Strategies in a Digital Age, September 11-12, 2014
- Co-Presenter, “eDiscovery for the Transportation Industry,” USLAW Webinar, August 21, 2014
- Presenter, “MPE+ and Corporate Collections and Investigations,” Access Data Users’ Conference, Las Vegas, NV, May 16, 2014
- Presenter, “Technology Is Not Only Word™, Excel™ and PowerPoint™,” Aderant Users’ Conference, Miami, FL, May 13, 2014
- Moderator, “Methods of Crude Oil Transport: Relative Risks and Benefits,” Environmental Law Institute Seminar, Washington, D.C., May 7, 2014
- Presenter, “A Step-by-Step Approach to Developing Legal Holds,” ARMA, October 27, 2013
- Presenter, “Sustainable Ethics — Compliance and Reporting in Environmental Matters,” WESFACCA Annual Ethics CLE, New Castle, NY, October 24, 2013
- Presenter, “Internet and E-Mail: Admissibility Issues of Electronic Evidence at Trial Explored,” Knowledge Congress Legal Series Webinar, March 19, 2013
- Presenter, “Litigation Holds: How to Properly Respond to and Issue a Notice to Preserve,” National Constitution Center Webinar, September 5, 2012
- Co-Presenter, “Legal Holds — Trends and Directions,” USLAW Webinar, August 2012
- Co-Presenter, “Are Written Litigation Holds Required to Avoid Sanctions in Federal Court?” DRI Electronic Discovery Committee Webcast, April 2010
- Presenter, “Avoiding ESI Pitfalls: Legal Holds, Information Management and Other Trends,” Philadelphia Area Society for Healthcare Risk Management (PASHRM), September 2009



Publications

- Author, "Not-So-New E-Discovery Amendments Are Making A Lasting Impression," *Washington Legal Foundation*, April 24, 2020
- Author, "Two Years In, New E-Discovery Rules Take Root, Albeit Slowly," *Washington Legal Foundation*, April 20, 2018
- Author, "Cautious Optimism As The "New" E-Discovery Rules Begin To Gain Traction," *FDCC Insights*, March 2018
- Quoted, "Dentons' Low-Tech Email Breach Shows Firms' Vulnerability," *Law360*, June 27, 2017
- Quoted, "High Attack Risk Forces Firms to Weigh Ransomware Options," *Law360*, April 28, 2017
- Author, "At One-Year Anniversary, Cautious Optimism as New E-Discovery Rules Gain Some Traction," *Washington Legal Foundation*, December 2, 2016
- Co-Author, "ADA Website Accessibility: The Time for Compliance Is Now," *USLAW Magazine*, Fall/Winter 2016
- Quoted in "Cyber-Security Insurance Becomes an Important Purchase for Companies," *Business First*, June 3, 2016
- Author, "Despite Advent of New E-Discovery Rules, Old Judicial Habits Still Infect Federal Decisions," *Washington Legal Foundation*, May 27, 2016
- Author, "Neiman Marcus Fallout: Standing in Data Breach Class Actions," *Claims Management*, December 17, 2015
- Co-Author, "The 2015 Amendments to the Federal Rules of Civil Procedure: Guide to Proportionality in Discovery and Implementing a Safe Harbor for Preservation," *Defense Counsel Journal*, International Association of Defense Counsel, October 2015
- Co-Author, "Reputation Damage Control: Insuring the Cost of Mitigating Reputational Harm Following a Cyber-Attack or Data Breach," *USLAW Magazine*, Spring/Summer 2015
- Editor and co-author, "Methods of Crude Oil Transport: Relative Risks and Benefits," *Environmental Law Reporter*, September 2014



- Featured, "Conversations With ... The Honorable Dick Thornburgh, Rebecca Love Kourlis, and John J. Jablonski" on proposed FRCP amendments, *Washington Legal Foundation*, Winter 2014
- Quoted, "Repercussions of a Data Breach Can Be Disastrous," *Buffalo Law Journal*, July 15, 2013
- Co-Editor, *Best Practices Guide for Legal Holds*, Arkfeld on E-Discovery and Evidence, Law Partner Publishing and LexisNexis, 2012-2013
- Co-Author, "Avoiding or Reducing Environmental Enforcement Headaches," *USLAW Magazine*, Spring/Summer 2013
- Quoted, "The Big Data Opportunity and Challenge for Law Firms," *Biztech*, April 23, 2013
- Co-Author, "Let the (Hoster and Poster) Beware," *DRI Today*, Defense Research Institute, November 30, 2012
- Quoted, "Cheat Sheet: What *Chin v. Port Authority* Means for In-House Counsel," *InsideCounsel*, October 9, 2012
- Quoted, "Defending Big Data," *Law Technology News*, October 2012
- Cited, "A Roadmap to Litigation Readiness: RIM Staff Help Navigate the Way," *Information Management*, September/October 2012
- Author, "Second Circuit Rejects Key Litigation Hold Standard," *Law Technology News*, July 16, 2012
- Quoted, "Remote, Coast to Coast," *Law Technology News*, June 2012
- Co-Author, "Controlling E-Discovery: Drafting an Effective Records-Management Policy," *For the Defense*, Defense Research Institute, February 2012
- Author, "Raising the Bar on Proportionality in Preservation and Proportionality: Perspectives on Lowering the Burden of Preserving Data in Civil Litigation," *Legal Hold Pro Signature Series White Papers*, November 2011
- Author, "Why Law Firms Should Lock Down Their Mobile Devices," *Law Technology News*, October 2011
- Author, "Lessons from the Frontlines," *E-Discovery Team*, February 15, 2011



- Contributor, *Shale Watch Blog – A Review of the Legal Developments Arising Out of Hydraulic Fracturing*, February 2011
- Author, “If You Hold On for One More Daaaay,” *Corporate Counsel Magazine*, February 2010
- Author and Editor, *7 Steps for Legal Holds of ESI and Other Documents* (ARMA 2009)
- Quoted in, “Sidekick Outage Lawsuits Now Up In Air,” *Seattle Post-Intelligencer*, October 16, 2009
- Article Editor, *Environmental Law Journal*, State University of New York at Buffalo Law School, 1993