

SECURITY SYSTEMS



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DUVAL & STACHENFELD LLP

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## Duval & Stachenfeld LLP's Security Systems Practice Group

Companies in the security field devote themselves to the well-being and protection of their customers.  
They deserve a law firm that does the same for them.



## DUVAL & STACHENFELD LLP SECURITY SYSTEMS PRACTICE GROUP

Companies in the security field devote themselves to the well-being and protection of their customers. They deserve a law firm that does the same for them.

Duval & Stachenfeld's Security Systems Practice Group exists to help prevent and resolve delicate, confidential – and often highly technical – litigation and transactional issues in various sectors of the security field including:

- Commercial and residential alarm installation and service
- Retail and wholesale central station alarm monitoring
- Video surveillance
- Access control and biometrics
- Systems integration
- Global positioning systems
- Private security and asset protection
- Billing, collection and capital funding services



## Issues We Help You With

The legal issues we help our clients navigate include:

- **Enforcement of Security Service Contracts**

Most alarm installers and monitoring companies include various exculpatory provisions in their contracts, including limitations of liability, third-party indemnification and waiver of subrogation. The enforceability of these provisions in court is never guaranteed. At issue is whether the provisions are the result of equal bargaining power and whether they are clear, unambiguous and conspicuous. These issues must be constantly reconsidered as the law evolves – particularly if you operate in multiple states.

The enforceability of exculpatory provisions is equally dependent on the nature of the breach or wrong alleged. If intentional, fraudulent or grossly negligent acts are alleged, it may be more difficult to escape liability as a matter of law. In most states, however, simple negligence (and sometimes even gross negligence) can be excused with properly drafted exculpatory provisions. We have worked with dozens of different exculpatory provisions in a number of jurisdictions. We know how to draft these provisions and we know how to maximize your chances of getting them enforced.

- **Protection of Trade Secrets and other Confidential Data**

In the security industry, accounts are bought and sold with regularity. Unfortunately, accounts are also stolen with regularity. Unscrupulous competitors, often using misappropriated customer lists and data, prey on unsuspecting customers and either induce them to breach their contracts or otherwise switch their accounts. Our group has the knowledge and experience to protect your trade secrets and other confidential data when you sell or purchase accounts and we have the firepower to fight for you when your customers and/or confidential customer data are stolen or at risk of being stolen.

- **Enforcement of Confidentiality, Non-Competition and Non-Solicitation Agreements**

Despite your best efforts, you will lose a valuable employee at some point in the operation of your business. Better to have that employee subject to iron-clad confidentiality, non-competition and non-solicitation agreements. Otherwise, there is a risk that your employee will take your customer lists, sales and pricing figures, business methodologies and other key employees. It is important, therefore, that you have business protection provisions in your employment agreements and that you have someone with experience in drafting and/or enforcing them. Our Security Systems Practice Group has successfully sued in various jurisdictions to enforce these provisions.<sup>1</sup>

<sup>1</sup> Prior results do not guarantee a similar outcome.



- **Trademark Infringement, Unfair Competition and Violation of the Lanham Act**

You have built your company with hard work and care...so why let someone trade off of your good name? When it comes to their security, customers want to work with a name they trust. To gain an advantage, your competitors may use your name (or a version thereof). Our Security Systems Practice Group has successfully pursued trademark infringement, unfair competition and Lanham Act claims in these situations. You know how to protect your customers, let us help protect your good name.

- **Verified Response**

More municipalities are requiring central stations to verify alarm signals before dispatching police, fire or other emergency services. At their root, these "verified response" initiatives are designed to minimize false alarms and, thereby, reduce the strain on local government resources. As these initiatives spread, so do changes in the law. What constitutes a sufficient verified response? When should you dispatch, when should you not dispatch? Dispatch too soon and you could face liability with the municipality. Dispatch too late and a tragedy could result. Our Security Systems Practice Group has the experience and knowledge to help you walk through this evolving minefield of potential liability.

- **Wage Claims and Independent Contractor Laws**

Most security providers rely either on their own workforce or subcontractor/dealers for installations and service. While both have their advantages, we worry more about their pitfalls. For example, recent cases suggest that employees, such as technicians, who are issued their own work vehicles may have wage claims for overtime if they are driving those vehicles to and from work without getting paid for that transit time. On the other hand, the use of subcontractors for installations and service presents the risk that those subcontractors will make wage and benefits claims against your company. In other words, they (and the law of the state in which they are working), may treat the subcontractor more as employees than as subcontractors. These issues expose your business to unwanted headaches and costs – which are better addressed preventively.

### Value Proposition for Our Group

The Security Systems Practice Group has achieved remarkable results for clients since its inception in 2005. As one of our clients put it:

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**“In every case they have handled for us, they have done an exquisite job of investigating and preparing the case, which in most cases has led to an early resolution, either through dismissal or settlement, at amounts far less than initially anticipated.”**

*– Security Industry Client.*

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We are able to achieve these results in part because of the practical experience and leadership of partner Tim Pastore. Tim is uniquely positioned to advise clients in the security field having served a dual role as a Judge Advocate (JAG) in the United States Air Force and as a Special Assistant United States Attorney with the United States Department of Justice (DOJ). With the Air Force and DOJ, Tim was the primary legal counsel to military security forces on law enforcement, counter-terrorism and force protection matters.

Tim has continued that work in private practice, both as a Shareholder with Buchanan Ingersoll PC and now as a Partner with Duval & Stachenfeld LLP. He is a graduate of Boston College Law School and Bucknell University. He has lectured and published widely on various legal issues in the security industry.

In lauding Tim's work, a General Manager of one major client stated:

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“I found Tim to be a skilled negotiator who is extremely knowledgeable of the law. Tim follows up quickly and is thoroughly responsive to all questions and ideas... I would recommend Tim to anyone needing professional representation.”  
– Security Industry Client.

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Our Practice Group is national in scope – having handled matters on behalf of security industry clients in many states including<sup>2</sup>:

New York	New Jersey	Pennsylvania
Texas	Massachusetts	Maryland
Maine	Minnesota	Florida
Michigan	New Hampshire	Illinois

The Security Systems Practice Group offers a compelling cost alternative for clients seeking exceptional legal advice, but hoping to avoid paying the staggering billing rates that are often encountered at the larger firms. We are able to provide top-level service to our clients at rates roughly 20-40% less than large firm billing rates.

## Representative Matters

The Security Systems Practice Group has earned the trust of leading security companies and is proud to count as clients one of the largest electronic security companies in the country and one of the largest private security providers in New York State.

### Here are some examples of our recent work<sup>3</sup>

#### Aggressive Pursuit of Business Protection Claims

- Won injunctive and other relief against a former top sales manager for improper solicitation of customer

<sup>2</sup> Duval & Stachenfeld LLP has attorneys admitted in the following states: California, Connecticut, Massachusetts, New Jersey, and New York. We work with local counsel in the states where our attorneys are not admitted.

<sup>3</sup> Prior results do not guarantee a similar outcome. The facts and circumstances, and applicable law, may differ in your matter from those in the matters described.

accounts, breach of fiduciary duty, and breach of non-compete, non-solicitation, and confidentiality agreements.

- Won injunctive relief and monetary damage award against a competitor in federal court in New York for trademark infringement and dilution, unfair competition, unjust enrichment and violation of the Lanham Act.

#### **Defense of Employment Claims**

- Successfully defended claims of wrongful termination, negligent representation, promissory estoppel and breach of contract brought in state court in Florida by an employee terminated for falsifying his employment application.
- Successfully defended compensation and benefits claims in state court in Massachusetts by a former employee.

#### **Defense of Alleged Security System Failures**

- Won summary judgment in state court in Maryland in favor of a retail electronic security company in a case involving multiple deaths and significant exposure.
- Won dismissal of all claims in a multi-party personal injury action in New Jersey involving alleged negligent installation and design of fire detection systems.
- Successfully defended significant claims in federal court in New Hampshire brought by a major university and its research professor involving alleged failure of

freezer alarms and the resulting loss of research samples and academic grant funding.

#### **Other Security Matters**

- Advised a national client with a large subcontractor workforce on various state independent contractor laws to insulate it from potential wage and benefit claims from the independent dealers and subcontracted security systems installers.
- Led successful investigations, together with the Federal Bureau of Investigation (FBI) and the New York Police Department's Computer Crimes Unit, involving the improper sale and national distribution of copyrighted and personalized alarm panel software.

#### **Our Firm**

Duval & Stachenfeld is a mid-sized law firm based in New York City that is dedicated to providing service comparable to that provided by the finest professional service firms in the world. Our clients regularly laud us for not only performing excellent legal work for them, but also for understanding their business model and giving practical business and legal advice.

The firm has enjoyed great success since its inception over a decade ago and we are proud to highlight the following:

- We have one of the most respected and high-profile real estate departments in the U.S. – with a large group of full-time real estate lawyers, an incredibly





sophisticated practice, and major transactions not only in the United States, but in Korea, China, Japan, Hong Kong, Singapore and around the world.

- We have a multi-faceted litigation department that regularly represents large financial institutions and other sophisticated corporations in disputes around the country.
- We have a sophisticated Bankruptcy, Insolvency and Business Reorganizations Practice Group that handles distress and insolvency matters for real estate and corporate clients. We represent both distressed clients and clients attempting to capitalize upon distressed markets and transactions.
- We also have practice groups in Corporate, Securities, Mergers and Acquisitions; Corporate Governance; Private Equity; Environmental, Climate Change and Sustainability; Tax Exempt Organizations; Tax Exempt Real Estate; In House Counsel Support Services; Entertainment; and International Transactions.
- Over 25 institutional clients regularly come to the firm to obtain sophisticated legal advice.
- We have high quality attorneys with excellent legal educations. Indeed, three of the firm's core practice areas are chaired by Harvard Law School graduates.
- Many of the firm's lawyers are from the top law firms in the world. Some have called the firm a Latham & Watkins spin-off since both founding partners are alumni of that firm. However, our partners and associates also include alums from firms such as Mayer Brown; Cravath, Swaine & Moore; Schulte Roth & Zabel; Cahill, Gordon & Reindel; Dewey & LeBoeuf; and Fried, Frank, Harris, Shriver & Jacobson.
- We are a bicoastal firm with offices in New York and Los Angeles.
- We have a scrupulously observed set of values and principles (available on our website: [www.dsllp.com](http://www.dsllp.com)). These values and principles are the bedrock of the firm and make our attorneys eager and excited to work at the firm and to go the extra ten miles for our clients.
- We seek lawyers who, in their hearts, truly care about other people, including their fellow attorneys, our staff members and our clients.

Please visit us at [www.dsllp.com](http://www.dsllp.com) to learn more about our firm.



[www.dsllp.com](http://www.dsllp.com)

New York  
101 Park Avenue • 11th Floor  
New York, New York 10178  
(212) 883-1700

[www.dsllp.com](http://www.dsllp.com)

