

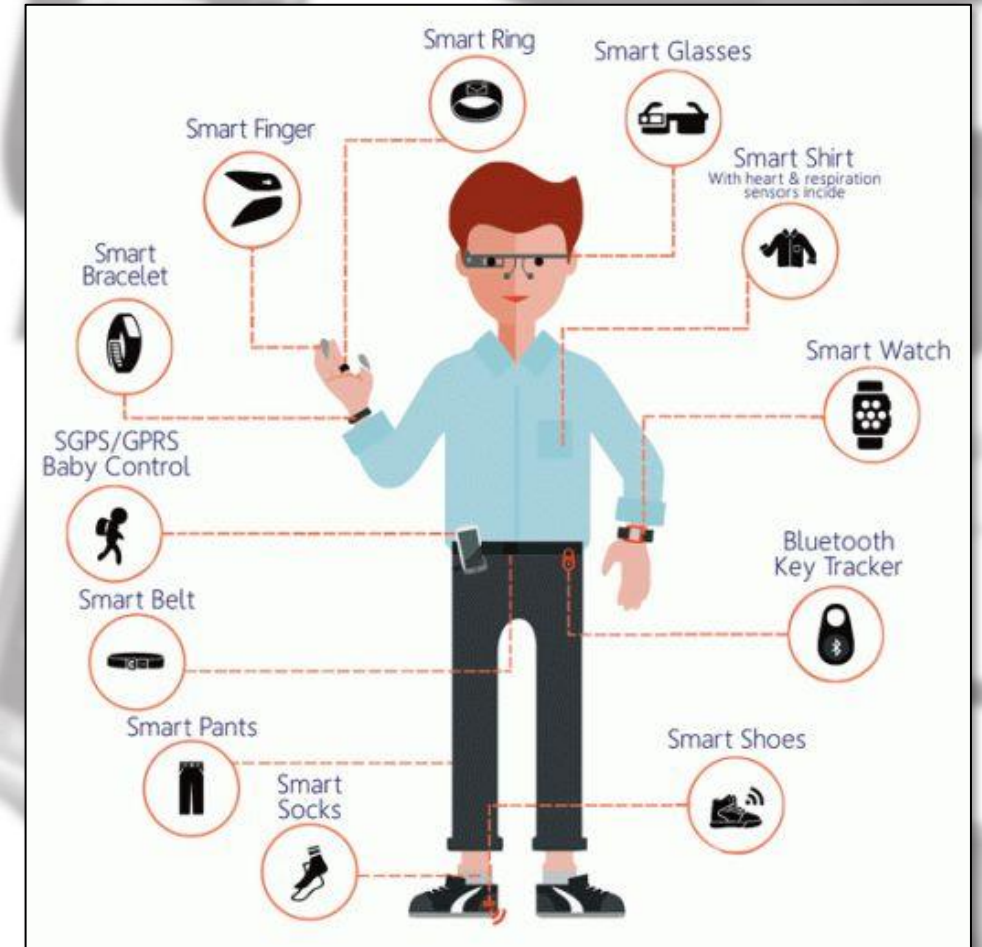
Where No One Has Gone Before: Managing the Rapidly Expanding Employee Data Footprint

Tuesday, September 1, 2020

Wearable Technology

Wearable Technology

- What is it?
 - Wearable technology (“wearables”), broadly speaking, is a term used to describe multiple devices that the user can wear that collects data through sensors and then transmits it over the internet, to proprietary warehouses (the cloud) and/or third-party developers
 - It collects, transfers, stores, and analyzes the data you generate by it's use



Brief History

- Overview
 - 1984 Seiko UC-2000
 - 2009 Fitbit
 - Apple Watch



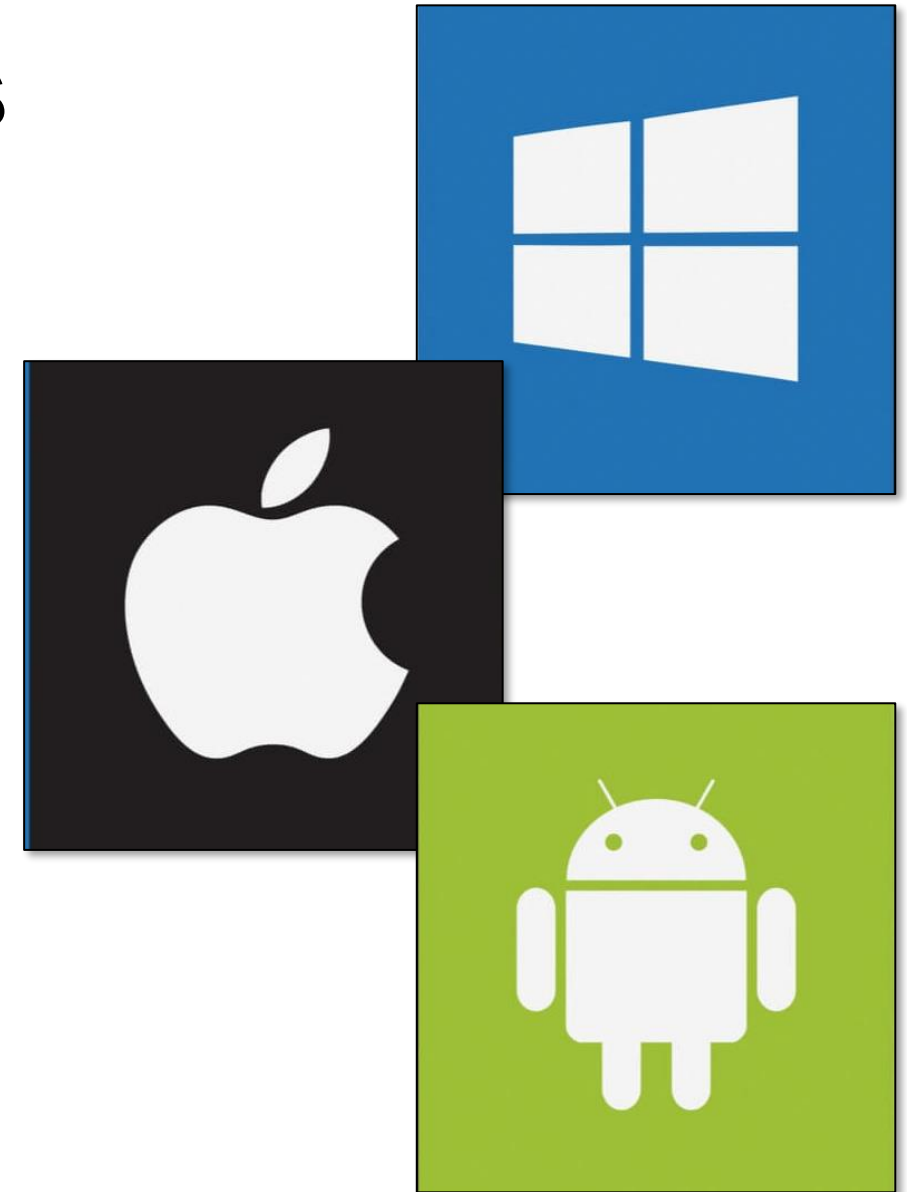
Functionality

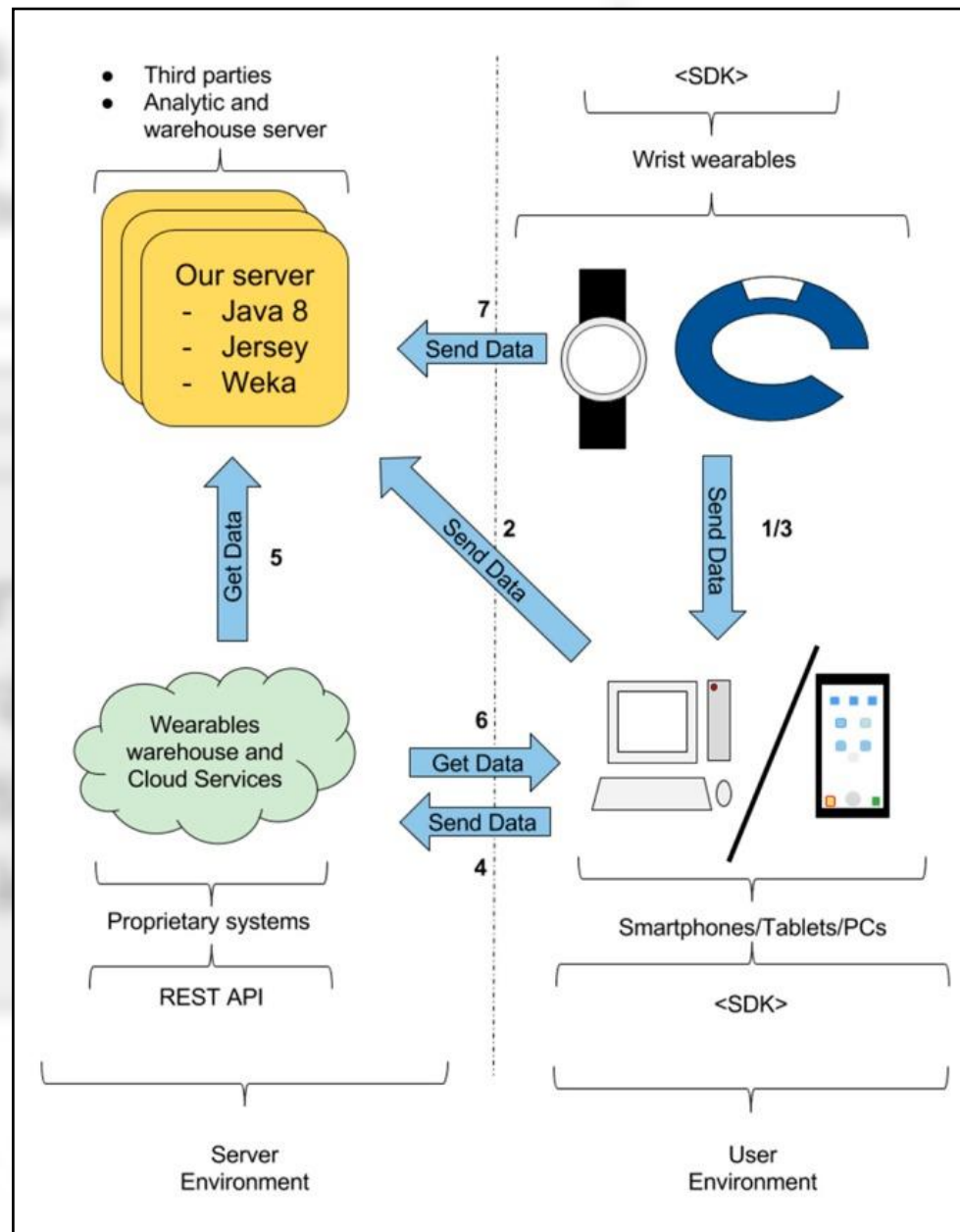
- How does it work?
- Hardware
 - Comprised of numerous sensors, *i.e.* heart rate or pulse monitoring, GPS, compass
- Software
 - “OS,” operating system, a platform to allow host several systems



OS Platforms

- What is an OS Platform?
 - These software platforms host apps, SDK's (Software Development Kits), and REST APIs (Representational State Transfer Application Programming Interfaces)
 - This platform allows both the user as well as third-party developers to access the data generated by the user's device





de Arriba-Pérez F, Caeiro-Rodríguez M, Santos-Gago JM. Collection and Processing of Data from Wrist Wearable Devices in Heterogeneous and Multiple-User Scenarios. *Sensors (Basel)*. 2016;16(9):1538. Published 2016 Sep 21. doi:10.3390/s16091538

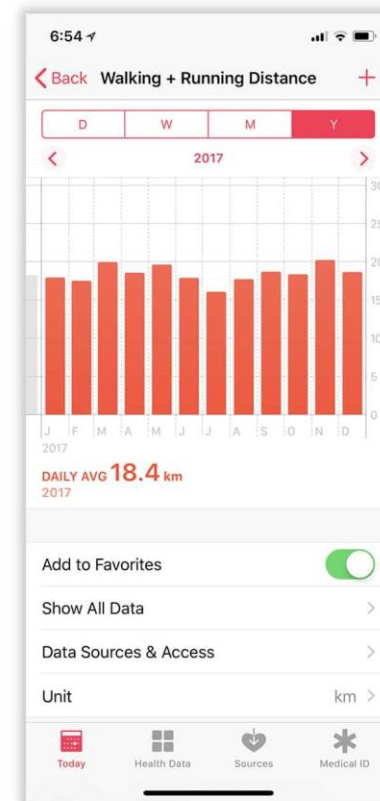
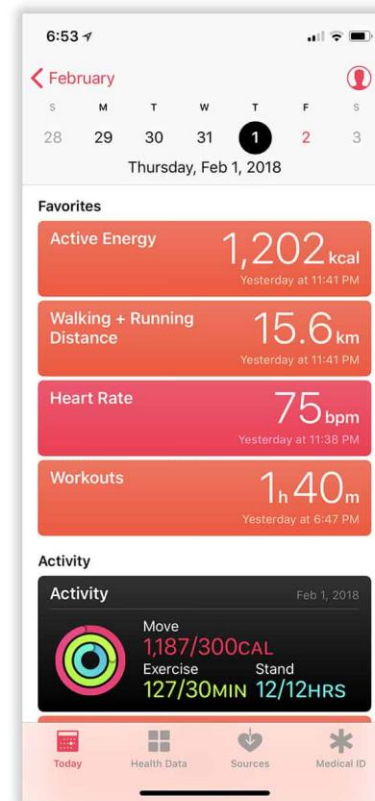
Apple Watch

- iOS (Apple) provide SDKs (Software Development Kits) (HealthKit, ResearchKit, or CareKit) to enable the development of apps for wearables to directly collect and send data
- But there is also proprietary warehouses, or cloud services, from which they can also store data



Apple Health Platform

- Apple Health is made up of a proprietary warehousing and cloud services, an app (Health App), and a SDK (HealthKit)
- The Apple Health warehouse and cloud services maintain all the data collected from users and provide some analytics



Legal Questions Posed

- HIPAA?
- Data Privacy?
- Data Security?
- Access to Data?
- Ownership of Data?



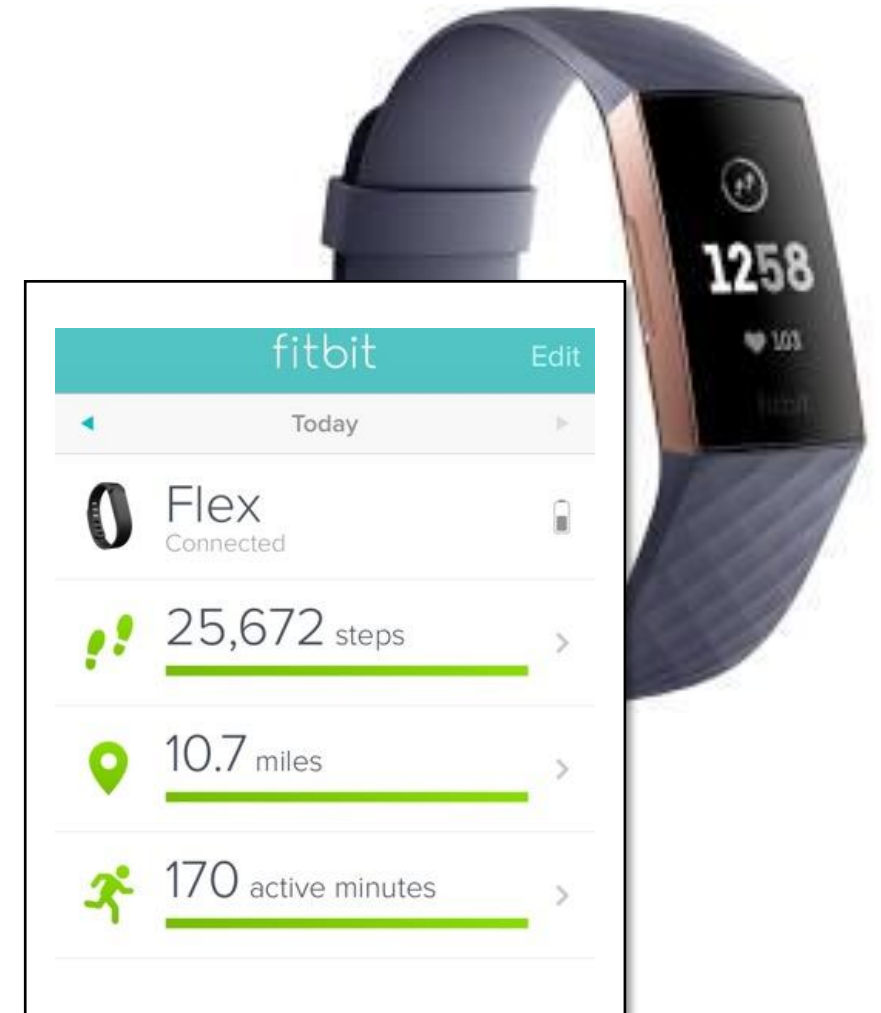
Litigation Involving Wearable Tech

- Lancaster County, Pennsylvania, 2015

(https://lancasteronline.com/news/local/woman-staged-rape-scene-with-knife-vodka-called%e2%80%93/article_9295bdbe-167c-11e5-b6eb-07d1288cc937.html)

- Calgary, Canada, 2014

(<https://www.forbes.com/sites/parmyolson/2014/11/16/fitbit-data-court-room-personal-injury-claim/#8880db673790>)



Social Distancing Wearables

- Corporate need for anti-pandemic gear: wearable tech that could prevent the spread of COVID-19 inside the workplace
- On-site and indoor location tracking and contact tracing
 - Blackline
 - Estimote
- Building a centralized database of workers' every move and interaction: recorded digital history
- <https://spectrum.ieee.org/the-human-os/biomedical/devices/wearables-track-social-distancing-sick-employees-workplace>

Discovery of Plaintiffs' Wearable Data

INT 1	Identify all wearable devices in your possession, custody or control
INT 2	Have you preserved all personal data on or generated by wearable device(s) related to your health since the date you first anticipated filing this lawsuit
RFP 1	Produce all personal data related to Plaintiff's health contained on or generated by any wearable device identified in response to Interrogatory No. 1. This includes but is not limited to data concerning calorie logs, sleep tracking, fitness challenges, heart rate monitoring and GPS tracking of Plaintiff at physical fitness or social facilities.

Social Media Monitoring

Social Media Monitoring

- The process of surveilling conversations on platforms (often on social media) that are relevant to a particular brand or company
- “Social Listening”



Social Media Monitoring



SOCIAL MEDIA MONITORING

- Looks back
- Gathers information
- Focuses on details
- Measures success



SOCIAL LISTENING

- Looks forward
- Analyzes information
- Looks at the big picture
- Guides as strategy



Source: 15 of the Best Social Media Monitoring Tools to Save You Time <https://blog.hootsuite.com/social-media-monitoring-tools/>

Social Media Monitoring Sources

Publicly available social networks

Blogs

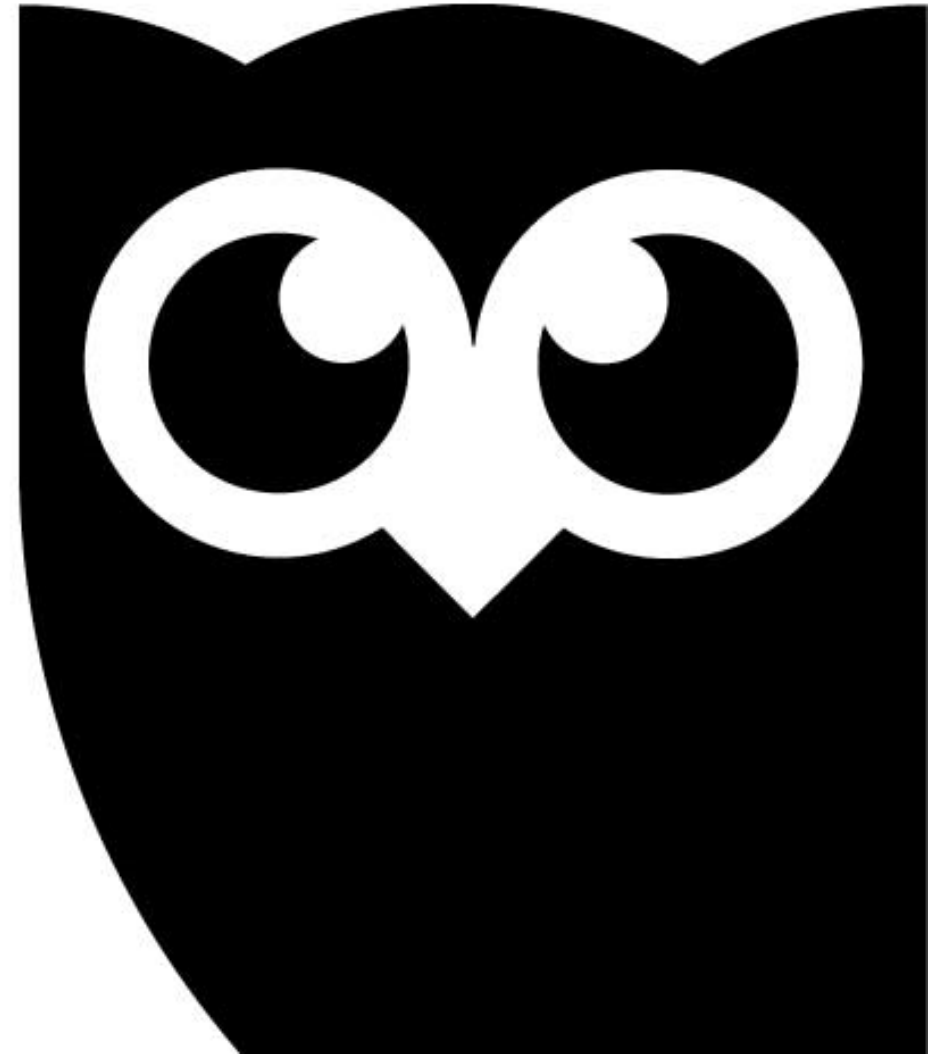
News

Review platforms

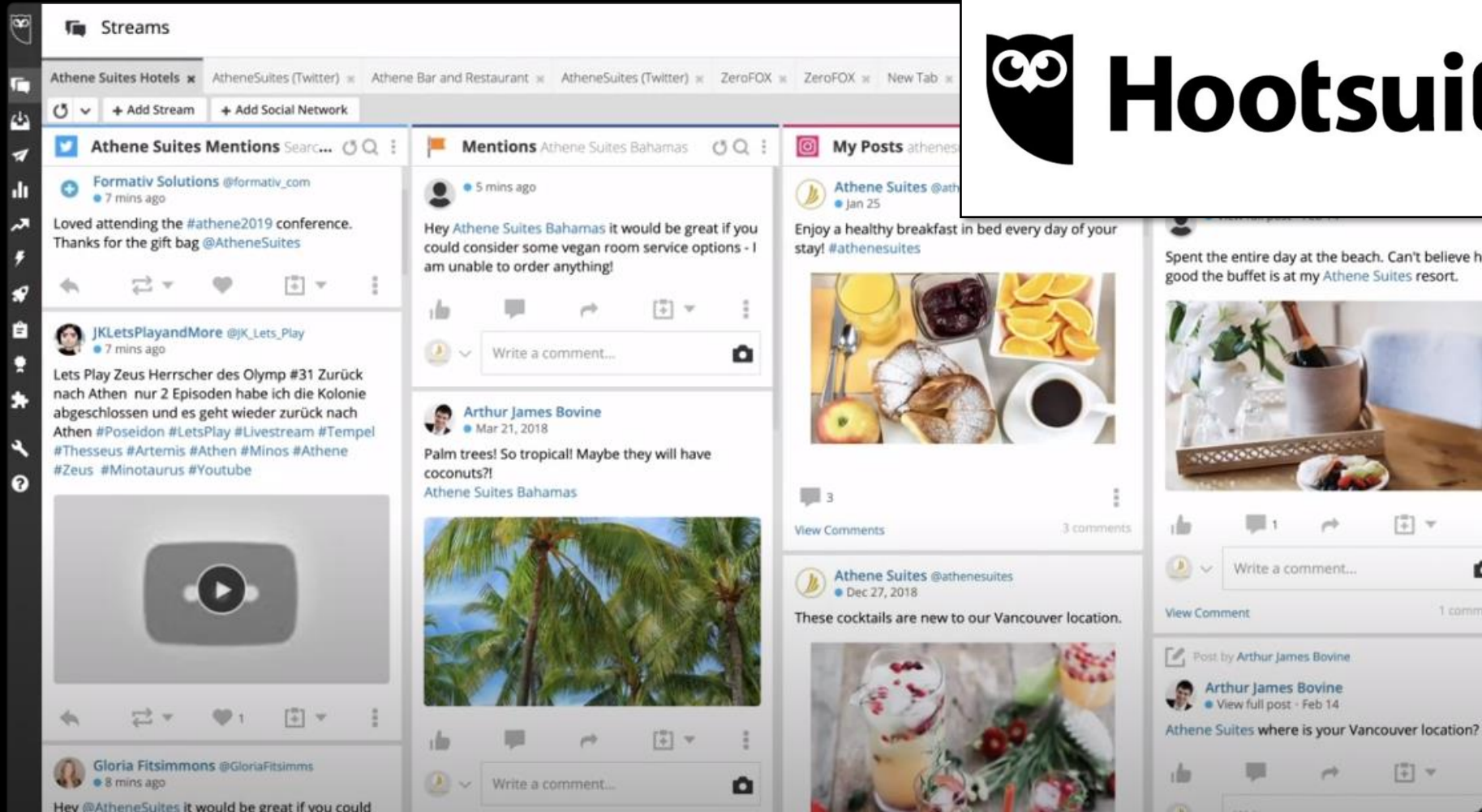
The rest of the web

What Type of Data is Recorded?

- Mentions
 - It can distinguish between positive and negative mentions
- Shares
- Likes
- Videos/“Stories”



How Does That Happen?



The screenshot displays the Hootsuite dashboard interface. At the top, there's a 'Streams' section with tabs for 'Athene Suites Hotels', 'AtheneSuites (Twitter)', 'Athene Bar and Restaurant', 'AtheneSuites (Twitter)', 'ZeroFOX', 'ZeroFOX', and 'New Tab'. Below this, the dashboard is divided into several panels. The left panel shows 'Athene Suites Mentions' with a search bar and a list of tweets. The middle panel shows 'Mentions Athene Suites Bahamas' with a list of tweets. The right panel shows 'My Posts' with a list of posts. The bottom panel shows a video player with a play button. The dashboard also includes a sidebar with various icons for navigation and a top bar with the Hootsuite logo and name.

Athene Suites Mentions

Formativ Solutions @formativ_com
7 mins ago
Loved attending the #athene2019 conference. Thanks for the gift bag @AtheneSuites

JKLetsPlayandMore @JK_Lets_Play
7 mins ago
Lets Play Zeus Herrscher des Olymp #31 Zurück nach Athen nur 2 Episoden habe ich die Kolonie abgeschlossen und es geht wieder zurück nach Athen #Poseidon #LetsPlay #Livestream #Tempel #Theseeus #Artemis #Athen #Minos #Athene #Zeus #Minotaurus #Youtube

Gloria Fittsimmons @GloriaFittsimms
8 mins ago
Hey @AtheneSuites it would be great if you could

Mentions Athene Suites Bahamas

5 mins ago
Hey Athene Suites Bahamas it would be great if you could consider some vegan room service options - I am unable to order anything!

Arthur James Bovine
Mar 21, 2018
Palm trees! So tropical! Maybe they will have coconuts?!
Athene Suites Bahamas

My Posts

Athene Suites @athenesuites
Jan 25
Enjoy a healthy breakfast in bed every day of your stay! #athenesuites

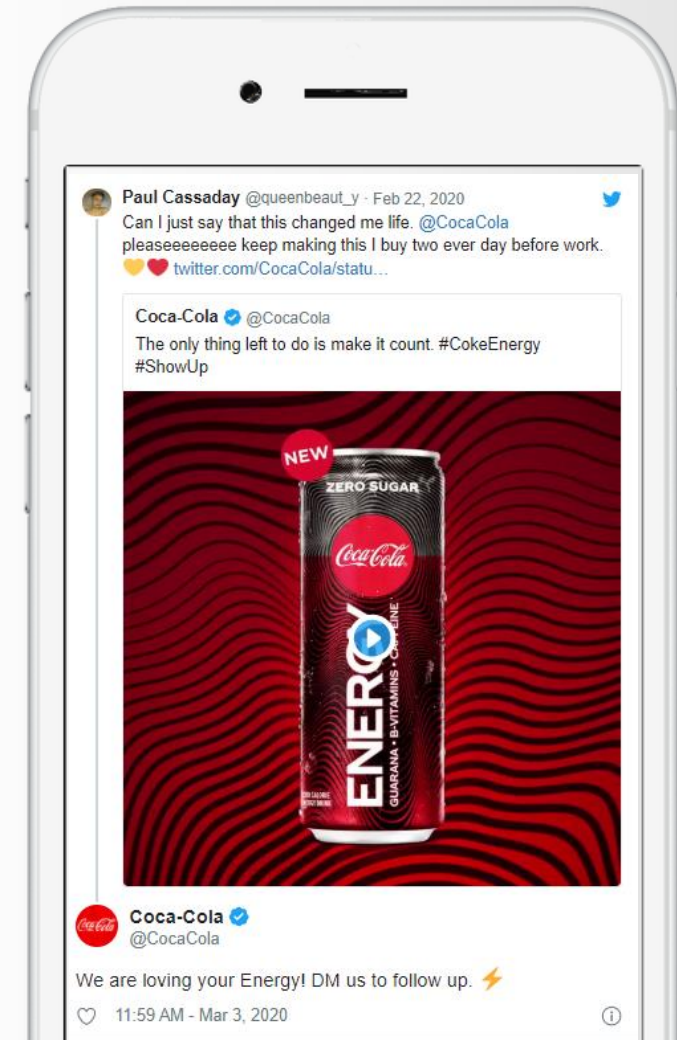
Athene Suites @athenesuites
Dec 27, 2018
These cocktails are new to our Vancouver location.

Post by Arthur James Bovine
Arthur James Bovine
View full post · Feb 14
Athene Suites where is your Vancouver location?



Social Media Monitoring Capabilities

- Engage with customers
- Manage crises
- Track competitors
- Track pain points
- Identify influencers and advocates



Potential Risks

- Sharing or retweeting
- Endorsing third-party content
- “Likes”
- Individual Employee commentary



Where is the Data Stored & Who Owns It?

- Social media platforms store the conversations
- Vendor will have records of what they sent the company
- If contact is made In the software through which social monitoring tools are provided, your company likely stores records of the outreach and subsequent contacts



Social Media Monitoring: Product Liability Defense

- Communications with Plaintiff
- Communications concerning the issues
- “Notice” of the alleged defect
- Training of employees responsible for communicating with the public through social media platforms
- Documentation

Social Media Discovery to Plaintiffs

INT 1	Identify all Social Networking Sites where you are registered as a user, or maintain a user profile, and have posted content or engaged in social networking site activity
INT 2	Identify all Social Networking Sites where you have posted content or engaged in social networking site activity concerning [Defendant] or [Defendant's product]
INT 3	Have you communicated with any representative of Defendant on any social networking site? If so, identify the date, what was posted and who you were communicating with.
RFP 1	Produce electronic copies of Plaintiff's profile (including updates, changes, or modifications to Plaintiff's profile) on the social networking sites identified in response to Interrogatories 2 and 3. If electronic copies are not reasonably accessible, provide a hard copy printout of the requested information.

Cellphone Data

Location and Identification Data

Information about the geographic positions of devices

Common Misconception: “GPS” (Global Positioning System) data and “location data” are the same thing

Sources (Non-Exhaustive List)

- Global Positioning System (GPS) / User reported
- Internet Service Providers (ISPs)
- Social Media
- Websites and/or Web-Based Applications
- Carrier data/Cell towers
- Software development Kits (SDK)
- Bidstream Data
- Beacons
- Wi-Fi
- Point of Sales (POS)
- Point of Interest (POI)

What is Recorded?

- Latitude, longitude, and horizontal accuracy
- Altitude and elevation
- Timestamps
- Mobile ad ID
 - A sequence of random symbols, given by the mobile device's operating system

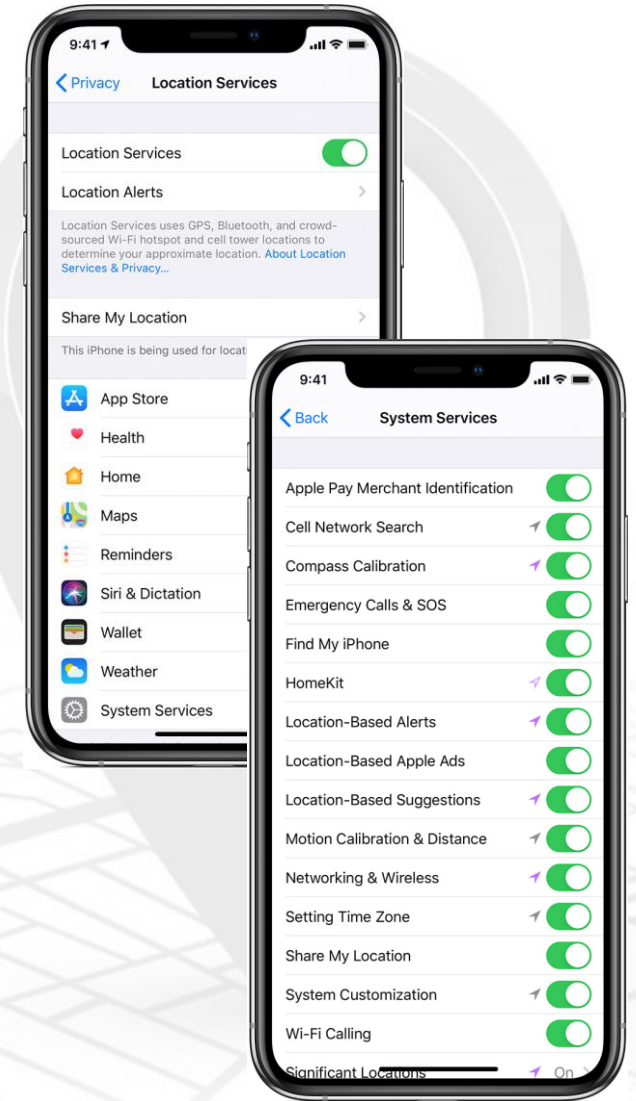


Cell Phone Data Analytics

- Location services allow for the designer and/or manufacturer, as well as other third party app developers, even websites, to collect and analyze data based on the location of your hardware device
- How it works? (according to Apple)
 - Location Services uses GPS and Bluetooth along with crowd-sourced Wi-Fi hotspot and cell tower locations to determine your device's approximate location
 - If Location Services is on, your iPhone will periodically send the geo-tagged locations of nearby Wi-Fi hotspots and cell towers in an ***anonymous and encrypted form to Apple***, to be used for augmenting this crowd-sourced database

What Am I “Enabling”?

- By enabling location services on your device:
 - Traffic: iPhone will periodically send **GPS locations** and **travel speed** information in an anonymous and encrypted form to Apple, to be used for augmenting a crowd-sourced road **traffic database**
 - Popular Near Me: iPhone will periodically send locations of where and when you have **purchased** or used apps in an anonymous and encrypted form to Apple, to improve a crowd-sourced database that may be used to offer **geographically relevant apps** and other Apple products and services
 - Significant Locations: iPhone and iCloud connected devices will keep **track of places you have recently been**, as well as how often and when you visited them, in order to learn places that are significant to you
 - Location-Based Apple Ads: Your iPhone will send your location to Apple in order to provide you with **geographically relevant ads** on Apple News and in the App Store



How Precise *is* the Location Data?

- There appear to be two different location data available, individual location data and aggregate location data
 - Individual location data
 - Aggregate location data

Commercial Use

- Employer Using GPS Data
- Amazon Tracking Employee Warehousing Activities

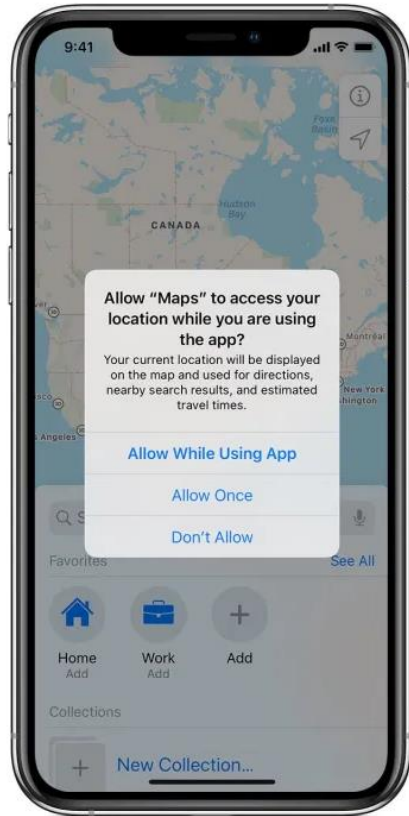


Location Services Litigation

- Many mobile applications continuously track user location and use location data
- Xora and other employer installed apps tracking employee location
- In 2018, following a report from the Associated Press, six proposed class actions were logged against both Google and Facebook for tracking, storing, and logging users location data. Those were rolled into one case and ultimately dismissed



Where Is It Stored & Who Owns the Data?



at&t



Sprint®



T-Mobile®

Case Study: Automatic Wi-Fi Login

- 2019; Four high school seniors in Maryland vandalized their school before graduation
- Despite covering their faces to evade the security cameras, their smartphones automatically connected to the school's Wi-Fi using their individual school log-in information



Security camera footage from Glenelg High School
Screenshot: Howard County Circuit Court ([Washington Post](#))

Connecting to WiFi Networks



Cellphone Discovery to Product Liability Plaintiffs

- Deposition questions where Plaintiffs' location or activities prior to the event are at issue:
 - What apps do you have on your cellphone that ask you to allow it to access your location?
 - What apps are shown on your cellphone under "Location Services"? What are they set to?
 - What apps do you use on your cellphone for directions to destinations when you are driving?
 - Were you using an app for directions at the time of the accident? (What app; have you preserved the data on that app, produce phone for collection?)

Cellphone Discovery to Product Liability Plaintiffs

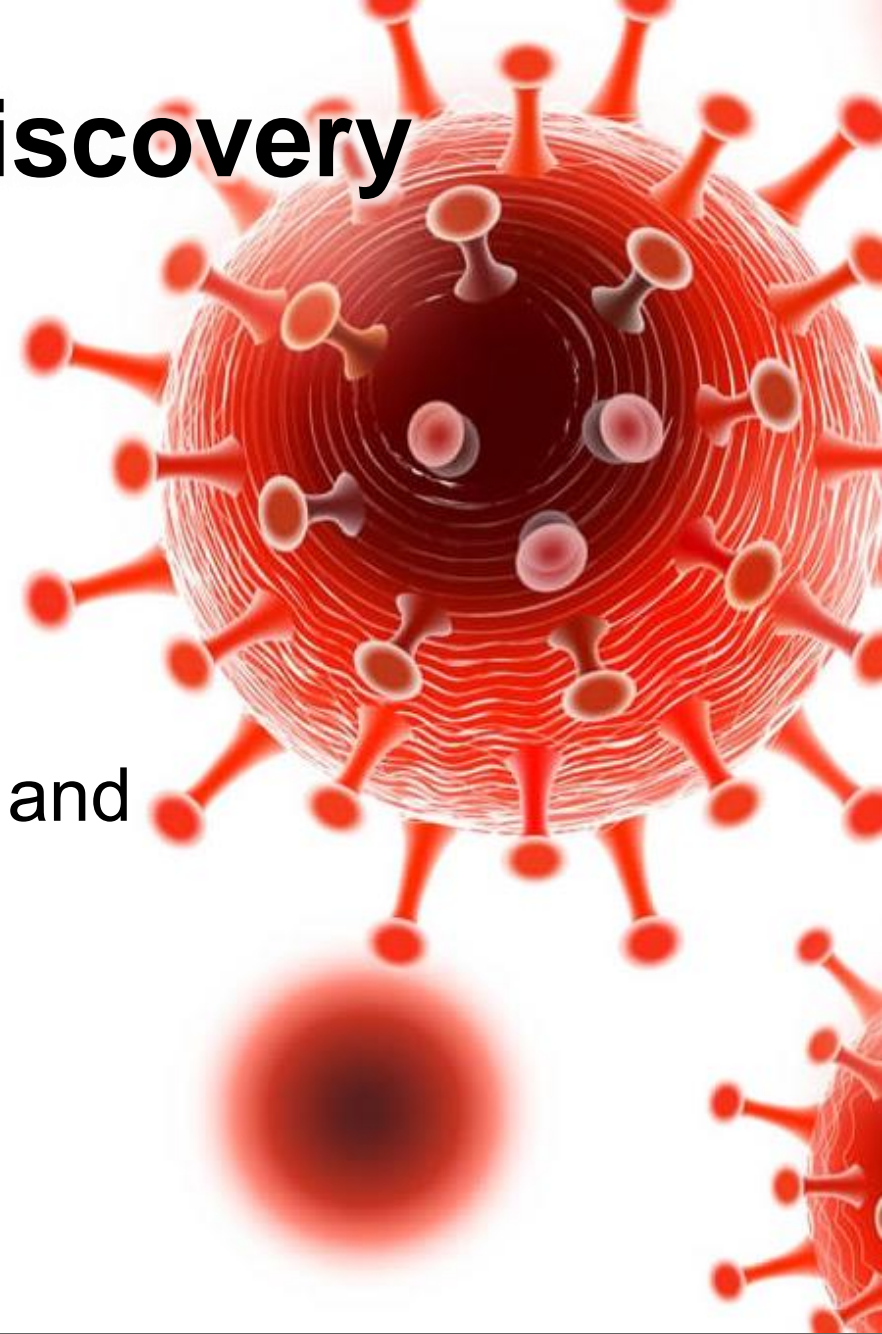
- Plaintiff's disputed medical condition:

INT 1	Identify all apps on your cellphone used while working out, while walking or while otherwise being physically active? For each, identify the date you first installed that app on your phone?
RFP 1	For all apps identified in response to Interrogatory No. 1, produce the receipt or evidence of when you installed that app on your phone
INT 2	Identify apps on your phone that contain photos of you
RFP 2	Produce photographs of you (or the injured plaintiff) that are on or were generated by the apps identified in response to Interrogatory No. 2

Corporate Data Footprints: COVID 19 Impact on Corporate Records

COVID-19 Impact on eDiscovery

- “Work from home” data sources for preservation and collection
 - Personal computers and mobile devices
 - Location data
- Consider dates of key custodians’ activities and impact on their relevant data sources
- Interruption of data transfers
- New cyber vulnerabilities



Steps to Protect Against Spoliation Issues

Training

Communication

Coordination

Commitment

Questions? Thank You!

Angela Strickland

803.726.7424

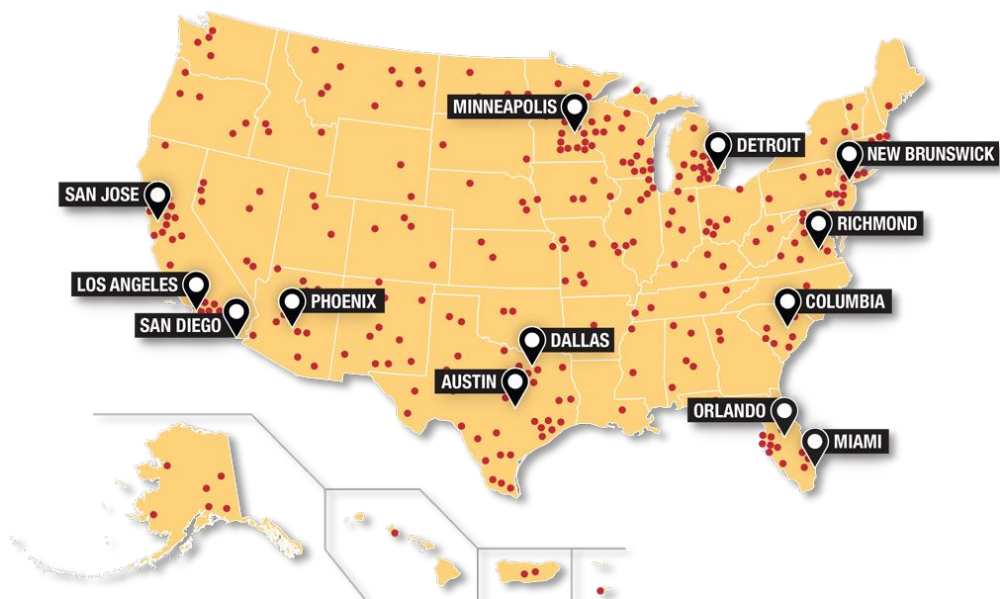
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Anywhere. Anytime. Any Courthouse.



- 13 offices doing Product Liability defense work
- Nearly 200 attorneys, including 25 first-chair trial attorneys
- Over 800 cases tried in 350+ courthouses in 48 states, Puerto Rico, the U.S. Virgin Islands and parts of Canada



CHAMBERS
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Product Liability, Mass Tort and Class Action Defense:

Automotive/Transport, 2008 – 2020
Pharmaceutical and Medical Devices – Defense, 2012 – 2020
Consumer Products, 2014 – 2020
Toxic Tort, 2019 – 2020

The Legal 500

Ranked for Product Liability and Mass Torts: Nationwide, 2009 – 2020

"Shortlist Firm" Product Liability: Nationwide, 2012, 2014, 2016

Chambers & Partners USA

Product Liability Group of the Year, 2017 (8-time recipient)

400 Largest U.S. Law Firms, 2014, 2018 – 2020

Law360