

**Panel: Social Media and ESI – Debtors and Creditors Beware!**

*Do e-savvy bankruptcy professionals have a competitive advantage in this challenging economy? How can Twitter, LinkedIn, Facebook, Pinterest, Instagram, e-Discovery and information governance affect your business? This panel will explore the benefits, risks and responsibilities of social media and electronically stored information from the business, legal and privacy perspectives and review the practical do's and don'ts of social media and ESI policies and practices.*

## **Connecting and Reconnecting, Forever – Social Media and ESI**

“Tweet”, “Re-Tweet”, “Post”, “Like”, “History”, “#Hashtag”, metadata ... these are just a few of the many newly coined phrases of the Information Age. Ten years ago, some of these terms did not even exist. Today, these and related issues directly impact many businesses’ decision making, marketing strategy, risk exposure and bottom lines. This is merely the tip of the 21<sup>st</sup> century social media and electronically stored information (“ESI”) iceberg!

First, social media is potentially the most universally utilized, sought-after, abused, understood and misunderstood resource of the 21<sup>st</sup> century. @Twitter handles abound as do links to Facebook pages, or invitations to “Connect with John Doe via LinkedIn!” For us professionals, the question is whether or not this is a positive development for business and what is its long-term staying power... its viability. Is Twitter, LinkedIn, Facebook, Youtube and many others, really worth the hype for bankruptcy and restructuring professionals? What are the pros and cons and does the cliché “the more the merrier” fit? Or is social media something to explore with great caution and concern? Benefits exist for firms and individuals using social media, but have all the risks surfaced...and have they been addressed?

Second, we will explore the do's and don'ts of social media's not-so-distant cousin, electronically stored information, or ESI. ESI has quickly become a major player in the world of bankruptcy, litigation and restructuring; where information and historical information is everything. Statistically speaking, 93% of the information created in 1999 was originated electronically, leaving a nominal 7% originated in some other way, such as paper of some sort. Fast forward 15 years, after all the advances in technology, you might as well say *everything* is electronic; amazing, but, also quite scary. What does this mean for today's professionals? Years back, creating a business record required time...draft and revise a letter or a fax. Receive a response, draft and lengthy response, send it via overnight mail. How has immediate transmission of business information changed the value of our communications? How has the volume of business information impacted our businesses? We have more information at our fingertips whereas years ago professionals were forced to physically sift through boxes of paper to find relevant information. Today, such a search usually requires keystrokes. However, has ESI actually increased efficiency? How do businesses decide what to keep and for how long? How do we assign value to our ESI? These are some of the questions we would like to address in order to enable you as an individual or as a firm, to have control over your information and be “in the know” when it comes to ESI.

Today's discussion will touch on these points, as well as the other intricacies of social media and electronically stored information. We would like to educate you on how to stay above sea level when it comes to social media and ESI. Social Media and ESI have done a great deal of good in our world; whether it be the Boston PD locating a dangerous suspect via twitter, connecting with a friend from years back, finding that old "misplaced" document for your boss, righting the wrongs in a crucial litigation, the list goes on. In order to enjoy the benefits of social media and ESI, a certain level of education is required as this is definitely part of our world today. Enjoy!

*Our panel today includes:*



**Martin A. Cauz (Moderator)**

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*AIRA's 30<sup>th</sup> Annual Bankruptcy &  
Restructuring Conference*

**Social Media and ESI – Debtors and  
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# **Biographies**



## **Martin A. Cauz**

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Martin has more than 20 years of professional accounting and consulting experience, including 10 years working with troubled companies, their investors and court-appointed officials. His experiences with troubled companies include advising and assisting companies with evaluating and

developing strategic business plans; financial modeling; financial reporting; building and reorganizing corporate teams; performing due diligence; evaluating and negotiating reorganization/restructuring plans; preparing/analyzing court and creditor reports; and preparing liquidation analyses. His industry experiences include healthcare, manufacturing, retail, distribution, sports franchises, telecommunications, financial services and technology. He started his career with KPMG and then moved to the private industry.

Martin has recently served as:

- Advisor to Petersen Health Care, a \$250 million long-term care provider that owns and operates more than 90 senior living facilities.
- Advisor to the Senior Lenders during the Chapter 11 Bankruptcy of the Texas Rangers (Major League Baseball) which was successfully sold to an investor group led by Hall of Famer Nolan Ryan for \$593 million, and the Chapter 11 Bankruptcy of the Dallas Stars (National Hockey League).
- Advisor to a \$250 million dental management service organization.
- Advisor to the Senior Lenders of Indalex, a \$500 million international aluminum extruder, resulting in a 100% recovery to the Senior Lenders.
- Advisor to a \$550 million distributor of electrical products and related services.
- Advisor to Airborne, a \$75 million nutritional supplement manufacturer specializing in effervescence products.
- Advisor to National Leisure Group, a \$125 million cruise travel vacation provider. At NLG, MGBD formulated a business plan, implemented a cost reduction program, and successfully sold the operations.
- Advisor to the Unsecured Creditors Committee of NVE Pharmaceuticals, the manufacturer of Stacker 2 and other dietary supplements, resulting in a successful negotiation of the Plan of Reorganization and settlement.
- Advisor to ATX Communications, a \$300 million CLEC and ISP provider, resulting in a successful reorganization and emergence from a Chapter 11 proceeding.
- Advisor of Conso, a \$180 million decorative trimming and apparel manufacturer, resulting in the successful restructuring of its capital structure.
- Advisor to Red Devil, a \$35 million manufacturer and distributor of caulks and sealants, resulting in an out-of-court refinancing of its secured credit facility.

Martin is a Certified Public Accountant and a Certified Insolvency and Restructuring Advisor. He graduated from Moravian College, with a Bachelor's Degree in Accounting. He currently sits on the Board for the Association of Insolvency and Restructuring Advisors (AIRA).



## Jason W. Gordon

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### Services

Advertising, Consumer Protection  
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Advertising, Promotions & New  
Media Counseling and  
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Brand Enforcement/ Trademark  
Litigation  
Domain Names & ICANN  
Intellectual Property  
IP/IT Transactions & Licensing  
Privacy & Data Security  
Trademark Prosecution

### Admissions

Illinois

### Education

Chicago-Kent, JD 2006

Jason Gordon is an associate in the advertising, marketing, and privacy law group, which was recently named a Media and Entertainment Group of the Year by *Law360*. He represents advertising agencies, *Fortune* 100 brands, media companies, consumer packaged goods companies, and other advertisers in all aspects of advertising, marketing, new media, branding, privacy, mobile marketing, behavioral advertising, right of publicity, and traditional trademark and copyright prosecution and counseling.

His practice includes the review of advertising copy, advising with regard to issues such as claim substantiation, false advertising and related intellectual property and privacy/publicity issues, and negotiating and drafting a broad array of contracts, including agency/client agreements, media buying agreements, sponsorship agreements and talent agreements. In the new media area, his practice includes drafting and advising on contracts related to social media, blogging, mobile marketing, behavioral advertising, app development and execution, music licensing, and charitable solicitations. In the intellectual property area, he advises on the protection, maintenance, and licensing of copyrights and trademarks. He also advises clients on sweepstakes, contests, and other promotions.

Mr. Gordon also has experience in resolving complex issues and disputes raising false advertising, unfair competition, copyright infringement, misappropriation of ideas, e-commerce, and contract concerns.

Mr. Gordon received a B.A., *with honors*, in Political Science and Economics from the University of Iowa. He received a J.D. and Certificate in Intellectual Property Law from Chicago-Kent College of Law. He was a fellow with the Chicago Intellectual Property Colloquium. Mr. Gordon placed second overall in the 2005 National Entertainment Law Moot Court Competition at Pepperdine University School of Law.

## ACTIVITIES

Mr. Gordon was re-elected to a two-year term as a director of the Chicago Bar Association's Young Lawyer's Section in Spring 2011. He is a volunteer attorney at Lawyers for the Creative Arts, and a member of The Recording Academy, The National Academy of Television Arts & Sciences, the Chicago Bar Association, and the JUF Young Leadership Division. He previously served as co-chair of the Chicago Bar Association's YLS Creative Arts Committee (2007-2009).

## PUBLICATIONS

Mr. Gordon's publications include:

- "5 Trends Dominate The Privacy Law Horizon," Law360, January 1, 2014 (co-author).
- "2013 – Social Media and Advertising: What Is on the Horizon?" Social Media Law & Policy Report, Bloomberg BNA, 02 SMLR 02 (January 2013) (co-author).
- "Terminating a sponsorship relationship: Conditions and Clauses," The Journal of Sponsorship , 4 J. of Sponsor. 1 (2010) (co-author).

## SPEECHES

Mr. Gordon's speaking engagements include:

- "January 2014 Legal Update," Brand Activation Association Government & Legal Affairs Council, January 2014.
- "Emerging Issues in Music Rights," 35th Annual BAA Marketing Law Conference, November 2013.
- "The Differences Between Canada and the U.S. in Advertising, Promotions, and Privacy Law," Gowling Lafleur & Henderson, October 2013.
- "Right of Publicity in Advertising," Chicago Bar Association's Media & Entertainment Committee, September 2013.
- "Social Media 2013: What is Trending, New York State Bar Association's Entertainment Arts & Sports Law 25th Anniversary Conference, May 2013.
- "@Events: How to Comply with the #Law: Before, During and After," IEG's 30<sup>th</sup> Annual Sponsorship Conference, April 2013.
- "New gTLD Issues: How Generic Top Level Domains Can Affect Your Client's Legal Rights," Chicago Bar Association Creative Arts Committee, November 2012.
- "Privacy Issues Lunch & Learn," The John Marshall Law School, April 2012.

- “Activating Sponsorship with Social Media: Laws and Other Pitfalls,” IEG’s 29<sup>th</sup> Annual Sponsorship Conference, March 2012.
- “Activating Sponsorship with Social Media: Laws and Other Pitfalls,” IEG’s 28<sup>th</sup> Annual Sponsorship Conference, April 2011.
- “Issues in Advertising Law,” Chicago Bar Association YLS Creative Arts Committee, February 2011.
- “Walking the Red Carpet as an Entertainment Lawyer,” The University of Iowa, March 2010.
- “How to Substantiate Advertising Claims and Keep your Competitors Honest,” Winston & Strawn eLunch briefing, July 2009.
- “Legal and Business Issues in the New Music Industry,” Chicago Bar Association YLS Creative Arts Committee, January 2008 (moderator).



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Author, speaker, and President at Financial Social Media, Amy McIlwain shares her knowledge at events around the world ranging from audiences of 1000 to small executive boardrooms.

Amy has appeared on FOX, CBS, ABC, and NBC as a social media expert and her book, *The Social Advisor: Social Media Secrets of the Financial Industry*, has been featured as a best-seller in the Amazon business category. With her unique background in both online marketing and financial services, it is no wonder Amy McIlwain is one of the most in-demand speakers in the financial industry. Aware that the rapid shifts between traditional and social marketing can be challenging to navigate and harness, she addresses the most pertinent issues regarding social media, resulting in a clear approach that allows you to cut marketing costs, consistently build your network, and increase your revenue. Furthermore, she provides content-packed action items that help you tackle the complex compliant issues within the financial industry so you can yield immediate results.

Amy launched Financial Social Media in 2010 which specifically addresses the compliance issues surrounding social media and the financial industry. For consulting, social media start-up, social media management or web design services, please visit the Financial Social Media website.

Amy published “*The Social Advisor: Social Media Secrets of the Financial Industry*” originally in the Fall of 2012. The book reveals cutting-edge social media secrets that are rapidly changing the marketing landscape as we know it. Discover how the industry’s elite advisors are leveraging this new form of communication and watching their business soar.





## Susan M. Usatine

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### Member

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Susan Usatine is a Member of the firm's Litigation Department. Susan is regarded as a litigator who understands how the Information Age has indelibly altered the way businesses make strategic decisions including the handling of high-stakes disputes.

Susan has served as trusted counsel to high level entrepreneurs, private equity firms and financial and accounting service professionals for fifteen years. She represents domestic and international businesses in bet-the-company litigation in federal and state courts, mediation and arbitration proceedings. In 2012 and 2013, Susan was named one of the United States' Top 250 Women in Litigation by Benchmark Litigation. Susan's clients believe this honor recognizes the results she obtains in the courtroom and her keen understanding of technology's effect on litigation strategy and outcome. Susan has answered sophisticated clients' "more for less challenge" by using efficiency strategies in every matter.

As a result of her successful and disciplined handling of fast paced, multi-state litigation with enormous information volume, Susan spearheads the firm's strategic planning in the area of litigation technology. As co-chair of the firm's Discovery Services Practice Group, Susan works with first-time and seasoned litigants and businesses that must frequently respond to non-party subpoenas to quickly and efficiently handle requests for electronically stored information. As national discovery counsel, Susan streamlines national legal hold protocol, evidence preservation and collection efforts and when the need arises, she appears in courts throughout the United States to defend our clients' electronically stored information protocol, requests and responses.

Susan's recognition that the intentional management of information is a critical business function led to her founding the firm's Information Governance Practice Group. As a business information strategist, Susan works with her clients to improve information stakeholders' access to secure information and to dispose of information that has no legal, regulatory or business value. Susan's information management strategies result in immediate and sustained organizational change.