

CYBERATTACKED

ONE ANGRY MAN HIRED A SMALL-TIME BLOGGER AND HAMSTRUNG OLD HILL PARTNERS. HERE'S WHAT THE FIRM FACED AND HOW IT FOUGHT BACK.

BY DAVID HECHLER

IT WAS LATE AUGUST 2014 WHEN KIM HOPKINS READ THE ARTICLE.

A new marketing assistant had seen it first in a Google alert, and she quickly showed it to Hopkins, the legal and compliance associate. It was about their company, Old Hill Partners, an investment advisory firm in Darien, Connecticut, and about their boss, CEO John Howe. It was not the kind of article he was going to like.

"Better show it to John," said Hopkins.

Howe remembers that his new hire was "alarmed." Old Hill was about to launch a \$300 million investment fund, and this wasn't what they needed. "You've got to read this," she told him.

It was posted on PR Nation and came from Whistleblowers International (WBI), a nonprofit based in Stockholm. "According to court records obtained by WBI," it said, "a Boston whistleblower has turned Old Hill Partners, its predecessor Patriot Group, its affiliate funds, and Mr. Howe personally, into both the IRS and SEC, with filings to other agencies pending."

Patriot Group, the article went on to say, had filed a lawsuit for \$20 million after a debtor had informed Howe and his company that he was prepared to report them for fraud. The article quoted a WBI legal consultant: "We are watching the whistleblower case closely as it involves alleged retaliation by Mr. Howe against the whistleblower and use of the United States bankruptcy code as a weapon of intimidation."

KIM HOPKINS, OLD HILL'S PARALEGAL, WORKED WITH THE LAWYERS.

PHOTOGRAPHY BY DAVID YELLEN



STEVEN FUSTOLO HAD BIG PLANS FOR REVERE BEACH.

Howe remembers sitting in his office and reading this. "I got about halfway through it and started laughing," he says, "because it was so preposterous. There were no investigations. There was no basis for investigations." He believed he knew who was responsible: There was indeed a Boston debtor and a legal imbroglio. But he thought: "This is stupid. And anyone who reads it is going to see it the same way as I do." Heck, it wasn't even published by a news organization. It was a press release that someone had paid to post. And this was supposed to be "legitimate news"? Howe forwarded it to his outside lawyer and got back to work.

That was the beginning. It now appears that Howe was right about who was behind the article. And there *was* a blogger who was paid to post it. There don't seem to have been any investigations. But Howe was wrong when he thought that it wasn't worth worrying about. Experts say that it's common for companies, executives and their lawyers to minimize the risk after receiving a cyberattack of this sort, but ignoring them can be perilous.

A few days later there was another article—a little more polished and quoting a couple of lawyers. Then another popped up, and another. Since then, more than 350 have been posted on websites like Ripoff Reports and Pissed Consumer. In a few instances, a story was picked up by legitimate news agencies. But Howe was slow to react. "I've been around a long time," he says. "I think it would have hurt a lot of people's feelings, but it didn't faze me." Howe's antagonist was apparently hoping he could bait regulators to investigate Old Hill. And if they did? "They'd find we're good corporate citizens," Howe says. "That was my worst case."

Worst case turned into something else. For the past nine months the Internet attacks have succeeded in seriously impairing a company with close to \$500 million of assets under management. The \$300 million investment fund

that was nearly fully subscribed? It fell apart. Howe has been trying to recruit a chief financial officer for months. Dealing with the barrage of postings and trying to make them stop have stolen an enormous amount of time and have cost—not counting staff time lost—at least \$700,000 in legal and associated expenses, Howe estimates. And it isn't over.

Howe is still fighting to get the posts removed from the Internet, even though he has proved that the information in them was fabricated. There is no such organization as Whistleblowers International. Jan Bohr, listed in the press releases as the organization's media contact in Stockholm, doesn't exist. Neither do any of the lawyers quoted in the articles. It was all made up. But that doesn't matter to Ripoff Report. It refuses to take down anything. And if you assumed there are laws that can force it to, you'd be wrong.

In fact, it can be a lot easier to blindside a business in the Internet Age than you might think. As news sources and blogs proliferate, wise companies monitor the flow to vigilantly guard their reputations. Countering attacks can be arduous and expensive, and it can be difficult to find lawyers who even know the turf. But failing to respond to accusations—no matter how untrue or what the source—can be dangerous. In the case of the Old Hill partners, it didn't require a state-sponsored cyberwar to inflict damage. It didn't even require hacking. All it seems to have taken was one angry man and \$1,800.

FOR NEARLY 20 YEARS JOHN HOWE, who is 57, has been running a firm that specializes in asset-backed lending and investment management. The assets have mostly been in real estate, and in 2009 Howe took over management of a portfolio of distressed loans. The company that held the loans, which on paper totaled about \$350 million, was called The Patriot Group, and Howe replaced the CEO.

CYBERATTACK: JAN 14, 2015
COMPLAINTSBOARD.COM

OLD HILL PARTNERS PONZI SCHEME EXPOSED

Fraudster John C. Howe Pays for His Daughter's Wedding with Funds Stolen from Investors and the IRS

CYBERATTACK: OCT 30, 2014
COMPLAINTSBOARD.COM

Howe had been through downturns in the real estate market before, and he knew that "the last thing you want to be doing is fighting with borrowers." He also knew that he wasn't going to recover anything like the paper value of those loans. His aim was to get something back and move on. And for the most part, he's done that. "We've cleaned up 90 percent of the portfolio," he says, "and we're just winding the rest of it up."

With one big exception. He's having a hard time winding up Steven Fustolo, a 56-year-old Boston businessman who, by all appearances, is behind the cyberattacks. In 2009, Fustolo owed about \$14 million. With interest, he now owes more than \$20 million. And this isn't a loan that's easy to wriggle out of: Fustolo personally guaranteed it.

It was a big loan because Fustolo had big dreams. He wanted to build Miami Beach-style condos in a gritty neighborhood in Boston. It was part of the planned redevelopment of Revere Beach, located a few miles north of Logan Airport.

Revere claims to be the nation's first public beach, and it has quite a history. In its heyday it featured a huge amusement park and dance halls where all the famous big bands played. But by 2006 the amusement park was long gone, and the area was looking for a boost.

Steven Fustolo saw an opportunity, and he wasn't alone. Several large luxury structures were in the works; Fustolo's was only the most ambitious. He called his planned 12-story condominium complex Ocean Club. The 242 units would range in price from \$300,000 to \$1.2 million, according to an article in the Boston Globe. It was slated to open in 2008.

It was going to be a step up for the neighborhood and for Fustolo, whose background was not in real estate. He was a partner in a Boston area accounting firm who made his name as a CPA. He was apparently very successful. In addition to his practice, he wrote books, articles and manuals on auditing and accounting. He lectured widely and sold course materials online.

Fustolo had cultivated a sideline in real estate at least since the early 2000s. It took him several years to acquire the Revere Beach parcels that, once the buildings were razed, provided the planned site for the Ocean Club. He was also buying buildings in Boston's North End and converting apartments into condos.

Real estate proved more challenging than accounting. Some of his ventures stirred local opposition because of the size of the planned renovations and the eviction of longtime

tenants. A journalist wrote a series of articles about these issues in a community newspaper in 2006, and the controversy they highlighted forced Fustolo to withdraw the variances he was seeking from the Boston Board of Appeal. He blamed the coverage, and grew so irate that he sued the reporter for defamation.

The court battle that ensued, however, was not about defamation. It was to determine whether Fustolo's suit would proceed at all. Reporter Fredda Hollander moved to have it dismissed under the state's narrow anti-SLAPP law (strategic lawsuit against public participation). The courts rejected Hollander's motion because she was not merely a citizen petitioning the government but was paid for her articles.

Fustolo eventually agreed to drop his lawsuit. In a comment posted under an article reporting this development, Hollander claimed victory. Five days later, Fustolo fired back. "I thought it was pointless to waste any more time obtaining a sizable judgment against Ms. Hollander and then having to chase her to collect it," he wrote. "The next time a reporter wishes to print maliciously false statements about any person as a means to manipulate the zoning/political process," he concluded, "hopefully, he or she will refrain from such unethical and defamatory practices."

It would not be long before Fustolo was suspected of playing "journalist" himself. And he would ultimately be accused of unethical practices that far exceeded the complaints he'd directed at Hollander. (Fustolo declined to comment for this article.)

WHEN JOHN HOWE FIRST CONTACTED Steven Fustolo about the loan, he knew he wasn't going to collect it all. "It was a bad time for everyone, and particularly in real estate," Howe says. He certainly didn't want to litigate, he adds.

For his part, Fustolo adopted a very different posture than the one he'd shown Hollander. He did not dispute that he owed the money and that he was personally responsible to pay it. He regularly assured Howe that the loan would be repaid. He just never did it.

"His promises to pay were unrealistic," Howe remembers thinking at the time. Fustolo hadn't seemed to accept that the property had lost value. "That concerned me, because he hadn't given up his dream about building this project, which meant it was going to be more difficult to get a settlement."

As Howe tried to convince the developer to start making payments or turn over the property, Fustolo said only that he didn't have the money. And he put the Ocean Club

in bankruptcy “in order to thwart our ability to foreclose on it,” Howe claims. But he didn’t declare personal bankruptcy. “That’s usually an indication that someone has money,” Howe adds, noting that the developer lives in an expensive house and belongs to fancy clubs. “He’s lived the life of Riley,” Howe complains.

By 2013, Howe’s patience was exhausted. He joined with two other creditors who had been trying to collect smaller loans that derived from some of Fustolo’s other properties, and together they forced him into involuntary bankruptcy. Fustolo fought the move from April until December of that year, when Judge Joan Feeney of the U.S. Bankruptcy Court for the Eastern District of Massachusetts finally dropped the hammer.

Litigation ramped up the pressure, but didn’t produce results. For Howe, it just meant lots of hearings and legal bills. But he seemed no closer to a resolution.

Then came the letter addressed to Howe’s lawyer. It was dated May 9, 2014, and was written by Bruce Edmands of Edmands & Williams. Fustolo had filed a claim against The Patriot Group and Old Hill Partners under the Internal Revenue Service whistleblower statute, his lawyer wrote. The developer was taking similar steps in notifying the U.S. Securities and Exchange Commission. “Mr. Fustolo has come to believe and now alleges,” the letter said, “that Patriot and its principal, John Howe, has abused and will continue to abuse the bankruptcy proceedings as a means to retaliate against him for reporting Patriot’s tax violations.”

Howe’s reaction? “I dismissed it because none of that was true.”

It was this letter that led Howe to believe he knew who was behind the Internet postings the following August. And he thought he knew what had prompted this stratagem. In August, Howe’s litigation group subpoenaed Fustolo’s bank records, which showed, Howe says, that the developer indeed had assets.

Still, that first “Whistleblowers International” posting hadn’t scared Howe. He’d laughed it off. But when he’d thought about it later, he was annoyed because it seemed to show that Fustolo “didn’t know any limits” and had “personalized” the dispute.

Howe’s view of the situation soon changed dramatically. “I took it much more seriously when there was a second post,” he recalls, “because it told me that this guy wasn’t going to stop. It’s one thing to send a letter to us privately, another thing to do the first post. But to do it a second time told me that this guy was frightening.”

HOWE’S ASSOCIATE, KIM HOPKINS, WAS IN CHARGE OF KEEPING track of all the documents. This had involved following the litigation and staying in touch with the lawyers. But now it meant searching the Internet as well. A paralegal by training, Hopkins had worked in a small law office for 22 years before she moved to Old Hill in 2010. She’s not the kind of person who’s easily shaken.

Nor was this the first time Old Hill’s business had been threatened. A couple of years ago, an Australian arrived in the office with an Eastern European muscle man in tow. He demanded to see Howe. Old Hill’s COO, Jeffrey Haas,

is a big man himself, and he tried to convince the intruders that Howe was out of town (which he was), and that they needed to schedule an appointment. When the Aussie started talking about driving over to Howe’s house, Hopkins stepped in. “You are not welcome here. You have to leave, or I’m going to call the police,” she told them. They left. (And she called the cops.)

The cyberattacks represented a different kind of threat. The postings multiplied in late August and September. They quoted multiple sources, including European lawyers who were said to specialize in whistleblower cases. The bankruptcy case was also ramping up, and the legal bills were mounting.

Meanwhile, Haas was trying to complete preparations for the fourth-quarter launch of that \$300 million asset-backed lending fund that was 95 percent capitalized, he says. Attorneys were working on finalizing the documents.

That’s when Howe decided to try to settle. “I blinked,” he says. They’d had one serious negotiation in the fall of 2013, as Fustolo faced bankruptcy. The debtor had offered a low six figures, Howe says. Howe came back with something under a million, but Fustolo didn’t budge. When the settlement talks resumed, Fustolo once again offered six figures, but this time the amount was even lower, Howe says: “That told me that he thought he had the upper hand, which alarmed me, because the guy was going the wrong way.”

After the talks collapsed, the mood at Old Hill was dour. The postings continued to proliferate, and they got worse—much worse. There were messages on the complaint boards, and articles that explicitly warned readers that John Howe was a scam artist who overcharged investor management fees or out-and-out stole client funds. And according to a posting on Ripoff Report, a second whistleblower was said to be preparing to come forward.

The attacks also grew more personal. Howe’s wife and daughter were mentioned. His daughter’s impending wedding was highlighted with headlines like: “Fraudster John C. Howe Pays for His Daughter’s Wedding With Funds Stolen From Investors and the IRS.” Photographs of Howe, his daughter and her fiancé were used in YouTube videos that resembled crude news reports featuring the still photographs accompanied by computer-generated audio tracks. More articles were delivered to Howe’s neighbors the old-fashioned way: through the U.S. mail.

There was a glimmer of hope last October. Howe’s lawyers sent a letter to Fustolo’s lawyers demanding that their client take down the postings within 48 hours. And it seemed to work: The whistleblower website disappeared. But the elevated mood didn’t last long. The website was gone, but plenty of negative messages remained, and new ones seemed to pop up each day.

The investment fund fell apart. Reputation is huge in the asset management business. “Potential investors don’t want to understand the story,” says Haas. “They just see it, and that’s enough to keep people away.” Howe puts it this way: “It’s like having the Ebola virus. Everyone knows that you’re a victim, but no one wants to get close to you until the quarantine period is over.”



“YOU’RE OUT THERE TRYING TO RAISE MONEY. YOU CAN’T RAISE MONEY WHILE THIS IS GOING ON.”

— COO JEFFREY HAAS

A CONFLICT BREWS, BOILS AND THEN EXPLODES ONLINE

October 2009: John Howe becomes CEO of Patriot Group, taking over portfolio of distressed loans

May 2011: Patriot Group obtains judgment against Fustolo that affirms he's personally responsible for company's debt

December 2013: After considering Fustolo's objections, federal bankruptcy court rules he's bankrupt

August 2014: Patriot Group subpoenas Fustolo's bank records

First posts appear accusing Howe, Patriot Group of tax fraud and retaliation

February 2015: Bankruptcy court finds Fustolo in contempt for failing to comply with order

April 2015: In state court in Florida, Fustolo agrees to stipulated permanent injunction requiring him to take down offending material

January 2010: Steven Fustolo puts his company, Revere Beach LLC, into bankruptcy

May 2013: Patriot Group (and two other creditors) file involuntary bankruptcy petition with court in Boston to force Fustolo into personal bankruptcy

May 2014: Fustolo's lawyer sends letter claiming client is a whistleblower and has reported Howe and company to IRS and SEC for securities and tax fraud

January 2015: Bankruptcy court issues temporary injunction ordering Fustolo to stop posting and remove posts from Internet

March 2015: In response to Fustolo's motion to dismiss, court rules that it doesn't have jurisdiction over alleged harassment, saying state courts are appropriate venue

May 2015: New posts about Howe and his company appear on Internet

FIGHTING THEIR WAY OUT HAS PROVED ENORMOUSLY CHALLENGING.

Their goal has been to stop the postings, which numbered more than 350 at one point, and to wipe them out. Fustolo has never acknowledged responsibility. When asked point-blank at a bankruptcy hearing if he was behind the attacks, he declined to answer, citing the Fifth Amendment. Howe and company have operated on the assumption that if they could prove Fustolo fabricated the allegations, this would force his hand—and convince websites and Internet service providers (ISPs) to remove the postings even without his help.

Howe told Hopkins and Haas to devise a strategy to counter the attacks and to work at it full time. There wasn't much of an alternative. As Haas puts it: "You're out there trying to raise money. You can't raise money while this is going on." The first thing they recognized was that the problem they were dealing with wasn't what you expect in a bankruptcy, and bankruptcy attorneys weren't likely to know how to solve it. So they set out to find a lawyer who did.

They talked to several they knew, and Ina Scher was recommended. A litigation partner at Davis & Gilbert in New York, Scher had begun her career as a prosecutor in the district attorney's office. She'd represented clients in defamation cases and had experience trying to get material removed from the Web. She knew the challenges were formidable.

For one thing, the laws are dated and can be hard to use to address problems like these. In civil cases like one claiming defamation, Scher says, you have to be able to prove who is responsible and show damages. As tricky as it can be to identify the defamer, it can be harder still to prove the damage caused by a post. (In this case, Fustolo already owed more than they could ever hope to collect.)

On the criminal side, the first obstacle is to entice authorities to take this on. And that can be a hard sell, Scher says. "In order to be a crime," she explains, "there has to be a threat of physical injury, threat to life or fear of imminent harm." That's not sufficient—we need more laws, she argues. "The damage that can be done to someone's reputation and the right to earn a livelihood can be as great a threat as physical harm. And there ought to be a statute that addresses that."

When one of Howe's lawyers told the U.S. attorney's office in Boston that Howe, a witness in a bankruptcy case, was being intimidated, the prosecutors declined to pur-

CYBERATTACK: MAY 3RD, 2015
COMPLAINTS.COM

OLD HILL PARTNERS BANKRUPTCY IS IMMINENT

sue it. They were sympathetic, but cyberharassment cases can be tricky, they said. Another factor, Scher knew, is that they're "expensive to investigate and to litigate."

There's one more legal hurdle, and this one is Mount Everest. It can be hard to get websites and ISPs to take down even bogus material because the relevant statute not only gives them no incentive, it actually shields them from liability. Initially intended to protect children from harmful material on the Internet, the Communications Decency Act of 1996 affords online publishers broad protection against claims based on speech posted by third parties.

Consequently, what lawyers can do may be limited to mitigating the damage. Scher did manage to get a fair number of websites to remove posts. At least two were mainstream sites: a television station in Las Vegas and Vimeo. When she explained why she was sure the material was false, both quickly took it down, she says. Other sites were implacable—especially complaint boards like Ripoff Reports. That particular site has been widely criticized for refusing to remove disputed material. The only recourse it offers subjects of posts is to pay \$2,000 to use its private arbitration process, which sometimes results in adjustments to, but never the removal of, a complaint.

Scher introduced her clients to another mitigation mainstay: PR. If a company generates enough positive publicity, she explained, it's hard for cyberattackers to do real harm. That's why large companies rarely worry about these sorts of attacks. On a Google search, they'd be blips that nobody would notice. Scher put Old Hill in touch with Peppercomm.com, an agency that helps build positive profiles.

Howe resisted. He didn't want a public profile at all. (He still doesn't, and that's one reason he declined to be photographed for this article.) His business was built on results and reputation, not marketing. But Haas pointed out something that Howe couldn't deny: "You have a public profile now, and it's not good." So he gave it a try. He wrote about the current thinking on asset-backed lending. He sat for interviews. Old Hill posted them on its website, and Peppercomm spidered them for maximum impact. But these couldn't come close to wiping out the attacks.

The hardest road was proving who was posting the material. Skilled harassers can cover their tracks. Lawyers

sometimes have to resort to serving John Doe subpoenas on websites and ISPs to identify the perpetrators, and even this strategy is no guarantee.

SCHER WAS STRUGGLING TO GET SUBPOENAS ISSUED BY THE COURT in New York. Meanwhile, Old Hill was growing increasingly restive. It was November—with no end in sight. Hopkins and Haas thought that Peppercomm might be able to help investigate, but the company advised them that this was beyond its expertise. Hire a specialist in cybertech investigations, Peppercomm suggested. A specialist? Who knew they existed? Not many people, apparently. "We turned to the Internet," Haas says, "because no one had a recommendation."

Chris Anderson heads a company based in Florida called CIS. A former U.S. Department of Defense contractor, he'd co-founded the firm in 2010, and he seemed to know his stuff. He'd also had success, he told them, working with Google to get material wiped from search results and indexes (where descriptions of articles may linger even after the articles themselves disappear). Old Hill's story was typical, Anderson says. Howe was convinced he knew who was responsible for the attacks. When they're relentless, these conclusions are "almost never wrong." When it's a one-off, Anderson continues, "you'd have better odds flipping a quarter than they're being correct." And those are the hardest to nail: "All they had to do was do everything right one time. We call them drive-by shootings."

The first step is to obtain the Internet protocol (IP) address and then the name of the person posting. When they can't nail these from the postings or from interacting with the poster, that's when the John Doe subpoenas come in. When Anderson entered the picture in late November, Old Hill had just obtained subpoena results indicating that the IP address had been intentionally hidden—which is increasingly common, he notes.

Anderson worked closely with Old Hill and Scher. Eventually he was able to find one post where the IP address was not hidden. It was an early one, which is another pattern he sees (attackers often improve with practice). But there was a wrinkle. They'd expected an IP address in Massachusetts; this one was in Ponte Vedra Beach, Florida. And try as they



LITIGATOR INA SCHER HAD DEALT WITH CYBERATTACKS

might, they couldn't discern a link to Fustolo. Could they have been wrong?

Anderson suggested that they call in the cavalry. On difficult cases, he often works with a group of specialists from Vorys, Sater, Seymour and Pease in Cincinnati. Ina Scher wasn't thrilled that her client was bringing in another firm, but Hopkins explained that they needed all the firepower they could muster to restore their business.

Old Hill was now counting on Whitney Gibson, the Vorys partner who heads its Internet defamation practice group. (Anderson estimates that there are around 30 firms nationwide that have similar practices.) Gibson needed a court order to get Comcast, the ISP for the poster, to reveal who it was. It took some time, but in January his efforts finally paid off. A Florida court issued the order, and Comcast turned it over. That was the way Howe and Old Hill finally learned who was smearing their reputations.

He turned out to be a small-time professional who uses the handle Sloane. He's paid to post what his clients provide, and to spider their work for maximum search engine optimization. Old Hill agreed to release Sloane from liability, and in return Sloane told them everything—and provided his complete correspondence with his client. (Old Hill has declined to identify Sloane, who said he fears for his safety.)

Sloane said that he never knew the identity of his client (and vice versa). They communicated exclusively through hushmail, which shields users' identities, and a pre-

paid cellphone that his client instructed him to call. He knew only that his client used the address fust@hushmail.com. (Old Hill noted in court filings that Fustolo's email account also began with fust@.)

Though he didn't know it, Sloane had more damning evidence in his possession. When he turned over the documents from which he'd created the blog posts, Old Hill had them examined and was able to identify an author from the metadata. It said "Steve Fustolo." And that wasn't all. Sloane was paid a total of \$1,800 for his work. The money was funneled through a PayPal account that belonged to a man who employed Fustolo's wife.

Sloane advertised his ability to promote negative PR on craigslist. That's how "Fust" found him. Their correspondence suggests that they were both satisfied with the partnership from August until mid-October, when Fust told Sloane that he was concerned because some material had been taken down. Sloane sounded alarmed. "I don't understand, because before designing the site, I told you that all content you provide us had to be true to avoid defamation," he wrote. "So, I'm confused, why would they remove it if it was true? Was it true or were you just telling me that?"

Fust tried to reassure Sloane by saying that even though everything in the blogs wasn't strictly accurate, the gist of it was. As he put it: "Some of the quotes could be challenged but the themes are true." He asked Sloane if he had contacts abroad to help him move Whistleblowers International to a foreign host. Sloane responded with sudden caution and a list of questions. (Old Hill learned that it was Sloane who took down the website—out of concern for his own welfare. It was merely a coincidence that he did so shortly after Howe's lawyers made that demand.) A few days later, it was all over. In his last communication, Fust asked Sloane to delete all communications between them.

With this material in hand, Old Hill moved quickly. Its lawyers filed a complaint in the bankruptcy court in January asking for injunctive relief. They cited the evidence they had gathered indicating that Fustolo was responsible for the attacks and argued that he should be enjoined from additional postings—and ordered to remove the many that remained. They mistakenly thought that this was the endgame. But it wasn't quite.

CYBERATTACK: AUGUST 25, 2014
PRNATION.ORG

JOHN C. HOWE, WESTPORT, CT. HEDGE FUND EXECUTIVE INVESTIGATED FOR TAX FRAUD AND SEC VIOLATIONS

At first Judge Feeney accepted Old Hill's contentions that Fustolo was trying to game the proceedings by harassing witnesses, which jeopardized the integrity of the process and violated the state's cyberharassment statute. In January she issued a temporary injunction instructing him to "refrain from harassing the plaintiff, including posting false and malicious statements on the Internet." She also ordered him to take down material already there. In the memorandum accompanying her order, she directed Howe's lawyers to amend their complaint to clarify that they were not seeking to enjoin defamation or to obtain damages for personal injury, which would be more appropriately argued in a state court than federal bankruptcy court.

But in late March the judge abruptly changed course. Fustolo's lawyers moved to dismiss the amended complaint, arguing that the plaintiffs had, in fact, injected issues into the bankruptcy case that were beyond the court's jurisdiction. What's more, they argued, there was no evidence that any of the allegedly harassing activity, even if true, had hindered the plaintiffs' participation in the bankruptcy proceedings. And Feeney decided that they were right. She dismissed the amended complaint on jurisdictional grounds, leaving only the bankruptcy itself intact.

As surprising as this decision was for Howe and company, the setback was brief. At the end of her memorandum, Feeney pointed out that the plaintiffs had already brought actions in state courts in Massachusetts and Florida seeking to remove the offending material. Those were the appropriate venues, she now suggested, for the plaintiffs to seek relief. They quickly took her advice, and three weeks later John Howe and Old Hill partners filed a joint motion with Steven Fustolo in Florida for a stipulated permanent injunction in which Fustolo agreed to "take all reasonable actions necessary" to remove the posts. Apparently, it had been Fustolo's turn to blink.

WHEN JOHN HOWE TRIES TO CALCULATE THE COST, IT'S HARD TO know where to start. Fighting Fustolo will eventually top \$1 million, he guesses. Howe is determined to revive his business, even though new posts began popping up in late May. Old Hill will go ahead with the delayed launch of the \$300 million investment fund, he says. He believes investors won't be fooled by the smears: "It's been out there long enough so that people can see it's nonsense."

In addition to the business costs, there was a personal price as well. He only told his family what was going on last October. "I just don't bring my business problems into my house," he explains. At that point he had no choice. His wife had been brought into the postings, and then his daughter and her fiancé. They each had careers, and they

CYBERATTACK: JAN 15, 2015
COMPLAINTSBOARD.COM

Old Hill Partners Caught in Their Ponzi Scheme-New Investors Defrauded

what we do now. We could not do it without the Internet." But the law has not kept pace. "The legal system in the U.S. is ill-equipped to deal with cyberassaults. The laws that do exist on the books are highly favorable to hosting companies, search engines." People and companies are left vulnerable, he says, with little to protect them against lies and fabrications. "The law lacks common sense," he says. "We fortunately had the resources to peel off the onion and get back to Mr. Fustolo. But very few people do."

The lessons other companies can take from this? It's crucial to respond quickly and to know that there are specialists who can help. The best lawyers aren't necessarily found in The Am Law 100, either. "This is a whole new field," Howe says, and it's a growing problem that other companies are sure to encounter. Protecting yourself requires knowledge, vigilance and excellent crisis management.

Howe credits the lawyers and the cyberinvestigator who eventually helped Old Hill battle back. But he also credits his in-house team—especially Hopkins and Haas—with managing the crisis. It was "critical," Howe says, to have someone on board with legal training who could anticipate what the lawyers needed and provide it quickly and efficiently. Without all those pieces, he says, they wouldn't have stood much of a chance.

Howe sounds optimistic about his company's future. But looking back, he says, this is one fight he would not have taken on. "There are times when it's better to just move on," he says. "And this would have been one of those times—had I known then what I know now." ■

were planning a wedding. He thought he could fix the problem and they'd never have to know. But then he realized "it wasn't going to end." So he sat them down and told them. He was worried about how they'd take it, but they handled it remarkably well, Howe says.

There was one indication that his family had been shaken. "I told all of my kids to take down Facebook and stop Instagramming," Howe says. "I've been telling them that for years. This time they listened."

There are larger issues that demand attention, Howe continues. Without the Internet, a business like his could not exist: "Twenty years ago, you had to have the resources of a bank or a brokerage house to do