



MEMORANDUM

COGENT COMMUNICATIONS BOARD OF DIRECTORS
PERSONAL CRIMINAL EXPOSURE AND
IMMEDIATE CORRECTIVE ACTION REQUIRED
April 17, 2025

Notice – Federal Criminal Exposure, D&O Voidance, and
Material Insurance Fraud Liability

To All Directors and Executives of Cogent Communications:

This memorandum serves as final and irrevocable notice to each of you—individually and collectively—that your failure to act in response to formal legal warnings has escalated this matter into federal criminal territory, with direct implications for personal liability, corporate accountability, and criminal insurance fraud.

You were given multiple opportunities to mitigate Cogent’s exposure and shield yourselves from personal consequences. You were advised, in plain terms, to retain criminal counsel. Instead, you chose silence – twice.

1. EACH OF YOU IS NOW PERSONALLY ON RECORD

Between March 14 and March 19, 2025, you each received:

- Formal legal notices
- Statutory warnings with direct citations, including 18 U.S.C. §§ 1503, 1512, 1519, 1343, 1956, and 2315

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- Forensic IP logs confirming corporate access to whistleblower materials
- Clear and lawful opportunities to course-correct before this matter became public

Your Chief Legal Officer's March 19 response did not deny receipt—it confirmed it. It also denied wrongdoing without inquiry and asserted the company's intent to remain silent.

That reply is now part of the formal whistleblower record submitted to multiple federal enforcement agencies.

2. YOUR D&O INSURANCE COVERAGE IS LIKELY VOID

Your failure to disclose material legal risks and active federal investigations during the underwriting or renewal of your Directors & Officers (D&O) policy may constitute criminal insurance fraud under applicable state and federal law.

Your insurer's position is no longer reliable or guaranteed.

- Material nondisclosure is grounds for denial of coverage.
- Knowingly concealing federal exposure may constitute a distinct prosecutable offense.
- Individual indemnity protections can be rescinded retroactively.

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- Each of you is now at risk for personal civil judgments and criminal defense costs that may no longer be covered.

3. YOU BREACHED FIDUCIARY DUTY UNDER SARBANES-OXLEY AND DELAWARE LAW

Upon receiving a credible whistleblower report supported by documentary evidence, each of you had a non-delegable legal obligation to:

- Investigate
- Escalate
- Disclose

You did none of these. That failure constitutes a willful breach of fiduciary duty—potentially actionable by shareholders, regulators, and insurers.

4. ATTORNEY-CLIENT PRIVILEGE WILL NOT SHIELD YOU

If you received legal advice that was used to facilitate or conceal this conspiracy, you are not protected. Under the crime-fraud exception (U.S. v. Zolin, 491 U.S. 554), attorney-client privilege is pierced when legal communications are used to further or cover up criminal conduct.

ANY INTERNAL DISCUSSIONS INVOLVING:

- Suppressing or withholding whistleblower evidence

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- Misleading investors, regulators, or law enforcement
- Coordinated retaliation or the referral of whistleblowers to known conspirators

...are subject to discovery by federal prosecutors under the crime-fraud exception.

5. YOU HAVE BEEN NAMED IN A FEDERAL WHISTLEBLOWER SUBMISSION

Your names, titles, communications, and digital access logs are now included in a formal whistleblower submission filed with:

- The U.S. Department of Justice
- Federal Bureau of Investigation (FBI)
- Securities and Exchange Commission – Office of the Whistleblower
- Internal Revenue Service – Criminal Investigations Division (IRS-CI)
- Financial Industry Regulatory Authority (FINRA) Enforcement Division

You are now part of the record. Your actions—and inactions—will be evaluated as evidence.

6. PUBLIC DISCLOSURE HAS NOW OCCURRED

The press release titled “11 Questions Cogent’s Leadership Can No Longer Ignore” is now live.

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The full 137-page whistleblower report—offered to the company and rejected by your Chief Legal Officer—is the source of that paper trail. It includes evidence that is now headed to the hands of federal prosecutors, and which many of you may not see again until indictments are returned by a grand jury.

The board was warned—professionally, repeatedly, and in writing. You were given every opportunity to resolve this matter constructively.

That opportunity has now passed.

FINAL DIRECTIVE:

Retain independent criminal counsel immediately.

Do not rely on Cogent's internal legal team to protect your personal interests. Their obligation is to the corporation—not to you as individuals.

If you believe you were misled internally, now is the time to come forward.

Silence will no longer shield you. It will define you.

FINAL NOTE:

- You were not ambushed.
- You were not deceived.
- You were not denied access to the truth.

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- You were given it—clearly, calmly, and repeatedly.
- You chose to ignore it.

That decision now defines your legal exposure, your professional reputation, and your legacy.

There is still a narrow window—but it is closing fast.

If you are reading this and know you were only told part of the truth...

If you know emails were buried, warnings dismissed, or facts filtered through internal gatekeepers...

Then this is your moment to act.

You don't have to go down with the group.

You don't have to follow a General Counsel who gambled the company—and your name—on silence.

Every board member carries independent fiduciary duties.

Every executive now faces individual criminal exposure.

Your D&O insurance is likely void. If you've been relying on it, you're already in danger.

ASK YOURSELF:

- Were you told that a whistleblower first reached out in December 2023?

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- Did you personally review the full 137-page whistleblower report—offered to Cogent and rejected by your General Counsel?
- Did anyone inform you that Cogent’s own IP address downloaded whistleblower evidence from KyleBacon.net?
- Were you told that I was incapacitated due to severe illness while, under activities that demonstrate clear legal, ethical, and criminal misconduct, I was forcibly and unlawfully divested of control of my company, along with my 1.2 million shares?
- Were you even aware that you are named in federal filings?
- You are now standing at the edge of a federal criminal investigation. The facts are in. The record is fixed.

WHAT HAPPENS NEXT IS ABOUT SELF-PRESERVATION.

- The first person to come forward is not the villain—they’re the adult in the room.
- They are the one the Department of Justice will view as cooperative, not culpable.
- They are the one who walks away with credibility—not a conviction.

THIS IS YOUR OFF-RAMP.

- If you need someone to hear your side—

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- If you know the company acted without your full knowledge or consent—
- If you're ready to protect your name—

Then reach out. Confidentially. Directly.
You do not have to go down with people who are already preparing to throw you under the bus.

If you've been misled about who Dave Koch is, go here and follow the link in the top portion of the page, *Who Is Dave Koch?* <https://fibernetworksolutions.net/news.html>

Respectfully,



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