

2016 HOSPITALITY LAW CONFERENCE

FEBRUARY 22-24, 2016,

NAILING DOWN RESPONSIVE CYBER COVERAGE THAT RESPONDS TO HOSPITALITY INDUSTRY RISKS

Presented by:

Joshua Gold, Esq., Anderson Kill

Darin J. McMullen, Esq., Anderson Kill

&

Heather Wilkinson, Vice President, Willis Towers Watson



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PRESENTERS



Joshua Gold, Esq.

Shareholder, Anderson Kill

Joshua Gold is a shareholder in Anderson Kill's New York office and Chair of the firm's Cyber Insurance Recovery Practice Group. Josh won a \$7 million recovery in a landmark U.S. Court of Appeals, Sixth Circuit decision, on behalf of a retailer that suffered a data breach as a result of computer hacking. The court rejected the insurance company's "direct loss" defense, instead applying a proximate cause standard to find coverage. The "direct loss" defense is common in such cases, the decision is of importance to businesses purchasing fidelity, crime and financial institution bond coverage.



Darin J. McMullen, Esq.

Shareholder, Anderson Kill

Darin J. McMullen is a shareholder in the Philadelphia office of Anderson Kill. Mr. McMullen's practice is concentrated in representing corporate policyholders in obtaining insurance recovery in complex coverage claims. Mr. McMullen represents policyholders in a wide variety of first and third-party coverage matters including property loss, business interruption claims, bad faith claims, EPLI insurance coverage, D&O and E&O claims, as well as construction-related coverage disputes.



PRESENTERS



Heather Wilkinson

Vice President, Willis Towers Watson

Heather is a Senior Broker and national resource for Willis Towers Watson with more than ten years' experience in the cyber and E&O industries. She has worked closely with several Fortune 500 companies and regularly represents Willis Towers Watson on panels in the cyber industry. Additionally, Heather has a background in Lawyers' Professional Liability insurance.



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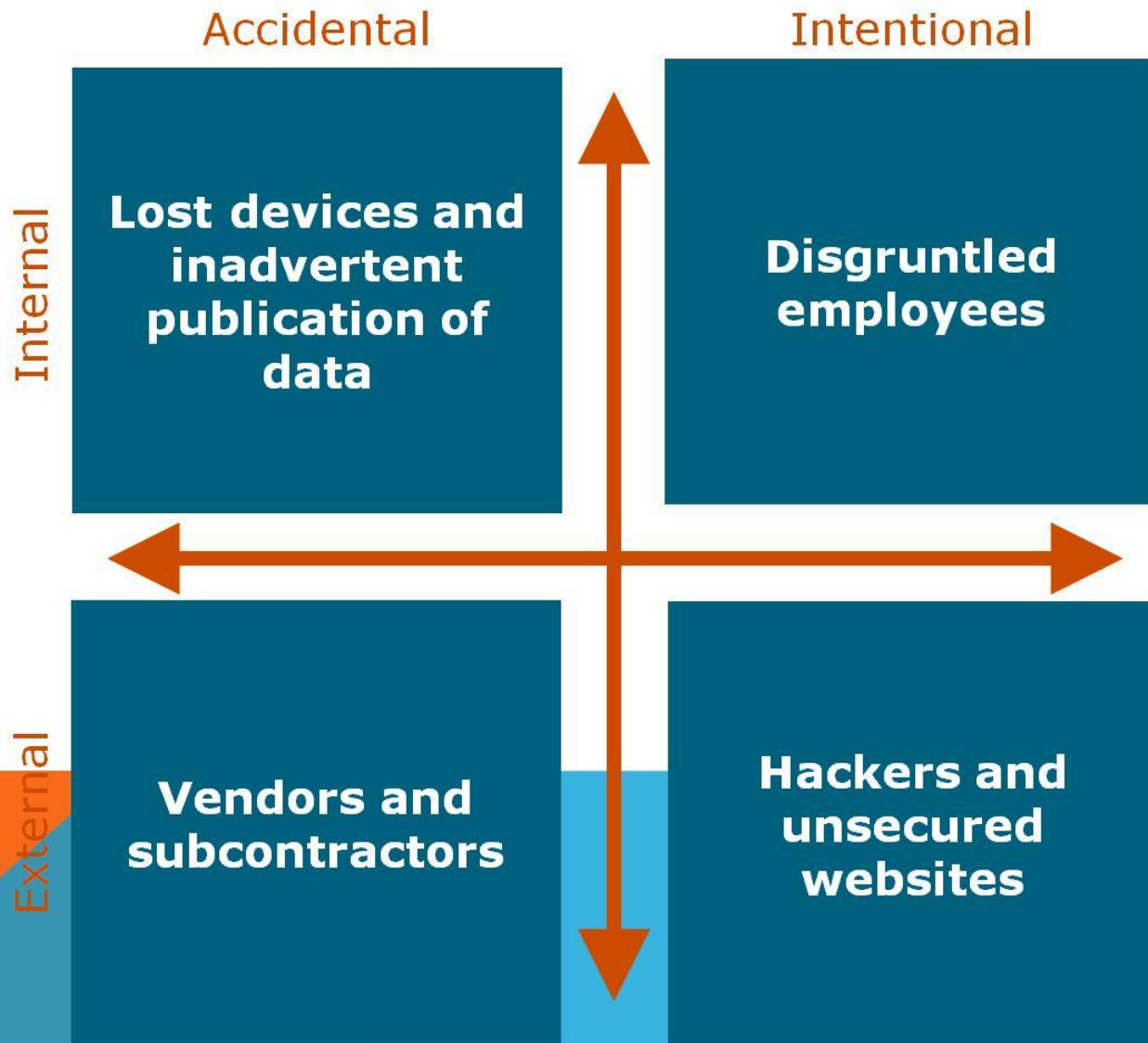


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CYBER RISKS ABOUND

- Ashley Madison
 - Sony Pictures
 - The Internet of Things / German Steel Mill property damage from cyber bug
 - Numerous new health data breaches
 - Cyber Hack Class Action victory in the Seventh Circuit
 - Denials and Coverage Litigation by Cyber Insurance Companies in: California; Utah; and elsewhere
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HOW DO DATA BREACHES OCCUR?



GOOD REASON FOR CONCERN

- 78,000,000 Protected Health Records released in Anthem breach in February 2015
 - Followed closely by 11,200,000 Protected Health Records released by Primera in January 2015
 - 2015 saw a rise in nation state sponsored attacks in utilities and technology sectors
 - February 2015 saw a billion dollar bank cyberheist
 - Increasing attacks on universities in 2015
 - Attacks against the US government climbed, with the sensitive information of tax payers and government employees being perpetrated
 - Increasing trend in attacks on security vendors as points of entry
 - Increased Regulatory action – SEC, FCC, FBI, CIA, Attorney Generals
 - As many as 70 % of cyber attacks are said to be undetected
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CYBER INSURANCE BUYERS.

- Retail
- Health care
- FIs
- Infrastructure
- Everyone else



NETWORK SECURITY AND PRIVACY INSURANCE

- First hard market in the industry
- Carriers exiting the market or reducing capacity and tower participation levels
- Starting to see the actual “costs” of data breaches
- Premiums increasing - sometimes as high as 300% depending on industry
- Retentions increasing
- Submission materials – carriers are requiring detailed information and are often relying on third party risk assessors to help quantify individual risks
- Despite rising costs (resulting from large scale breaches in 2014 and 2015), there is still a lot competition and plenty of capacity in the market



Third party liability coverage

- Privacy liability
- Network security liability
- Media/content liability
- Regulatory action
- PCI (Payment Card Industry DSS)
- Can be combined with traditional or technology E&O

First party reimbursement coverage

- Legal counsel expenses
- Crisis management expenses
- Notification
- Credit or identity monitoring costs
- Forensic investigation
- Public relations

Other first party reimbursement coverage

- Cyber extortion
- Business interruption
- Dependent business interruption
- Data Restoration
- System Failure Business Interruption (not offered by some insurers)

NETWORK SECURITY RISK AND DIRECTORS' AND OFFICERS' LIABILITY (D&O)

- Recent shareholder actions have followed closely upon the heels of a disclosed security breach.
- Claim predicates: failing to manage a business risk; failing to properly disclose risks; regulatory inquiries
- The D&O policy should apply just as if claim has not been a “cyber” incident.



CYBER INSURANCE BASICS.

- Limits
- Deductibles/ Retentions
- Coverages often sub-limited
- Program structures



CYBER INSURANCE TERMS.

- Negotiable?
- Retail, health care, FI options
- Tailoring terms for everyone else?




Terms & Conditions

TEN TIPS FOR NAVIGATING CYBER INSURANCE FINE PRINT

1. Insurance applications
2. Retro dates
3. Look for a clear policy structure: Modules and key coverage grants



TEN TIPS FOR NAVIGATING CYBER INSURANCE FINE PRINT (CONT'D)


4. Symmetry with other insurance (e.g., CGL and property insurance)
 5. Endorsements for special coverage needs when it comes to cloud providers and third-party vendors
 6. If you accept payment cards, PCI Issues and Card Brand fines and penalties
 7. Sub-limit concerns
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TEN TIPS FOR NAVIGATING CYBER INSURANCE FINE PRINT (CONT'D)

8. Beware breach of contract exclusions;
9. Beware conditions on "reasonable" cyber security measures;
10. BI and "Reputation Damage" insurance may be vague but it is becoming more relevant



THE FUTURE OF CYBER INSURANCE.

1. Cyber related property damage and bodily injury: New DIC product the shape of things to come?
 - e.g., the Internet of Things
 2. Express cyber coverage in D&O policies?
 3. More uniformity of product
 4. How can cyber insurance do a better job down the road?
 5. Where will coverage for social engineering caused losses be found: Cyber; crime insurance; other?
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NAVIGATING CYBER:

NOTICE INSURANCE POLICIES PROMPTLY

PROMPTLY

The logo for PROMPTLY features the word "PROMPTLY" in a bold, red, sans-serif font. The letter 'O' is replaced by a circular clock face with a white background, black hands, and black numbers. The logo is centered horizontally and has a subtle drop shadow.

THANK YOU

