

ACC NCR Summer Series: Cyber-Insurance: Trends and How to Get Paid

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Scott, who has been described as “the most interesting insurance lawyer in the world” and the “godfather of cyberinsurance,” focused his insurance recovery practice on cybersecurity and privacy risks in 2008. He is a co-chair of the Data Security and Data Privacy Subcommittee of the American Bar Association Section of Litigation Insurance Coverage Litigation Committee and a frequent speaker at national seminars regarding insurance coverage for cyber risks.

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Laura Jones is associate general counsel of Avaya and a leader of the ACC NCR Technology and IP Law Forum. She is an experienced commercial law generalist with particular emphasis on technology clients, and has been in-house for most of her career, with helpful interludes at large firms. She presently runs the US Commercial Law legal team for Avaya, a global communications solutions provider.

Basic Coverages

- Investigation, notification, credit monitoring, legal, and PR cost coverage for privacy or third party confidential information breach
- Network security and privacy liability
- Data restoration
- Regulatory liability coverage



Additional Coverages



- Business Interruption
 - Contingent Business Interruption
 - System Failure Trigger
- Cyber Extortion
- Bricking
- Social Engineering Fraud
- Reputational Harm

What's Changing Under The Pandemic?



- Buying insurance
 - Premiums?
 - Availability of limits in a tower?
 - Underwriting stringency and application process?
- Work environment-based concerns?
 - Work from home:
 - Home networks
 - BYOD
 - Everything online

Current Risks

- Business Email Compromises and Wire or ACH Fraud
 - Single Party Loss
 - Multi-Party Event
- Ransomware
 - Ransom
 - Lost Income and Extra Expense
 - Third Party Liabilities
 - Publication Of Data
- Cloud-Based Risks



Insurance for Current Risks

- Business Email Compromises and Wire or ACH Fraud
 - Single Party Loss
 - Crime coverage?
 - Social engineering fraud endorsement?
 - » Full limit?
 - Computer fraud coverage?
 - Funds transfer fraud coverage?
 - » Direct loss?
 - Cyberinsurance coverage?
 - Social engineering fraud endorsement?
 - » Full limit?
 - Property insurance coverage?



Insurance for Current Risks



- Business Email Compromises and Wire or ACH Fraud
 - Single Party Loss – coverage trapdoors
 - Exclusions from “damages” or “loss”?
 - Was the loss “direct”?
 - Limits and sublimits (particularly in crime policies)?
 - Failure to follow call-back or other procedures?
 - Voluntary payment exclusions?

Insurance for Current Risks

- Business Email Compromises and Wire or ACH Fraud
 - Multi-Party Loss: coverage questions for the buyer
 - Same coverage questions for single party loss
 - Third party liabilities?
 - What insurance covers a demand from the seller that the buyer...
 - » Breached the contract by failing to pay?
 - » Was negligent in paying a fraudster?



Insurance for Current Risks



- Business Email Compromises and Wire or ACH Fraud
 - Multi-Party Loss: coverage questions for the seller
 - Lost funds?
 - What insurance covers the lost payment?
 - What arguments do carriers make against covering the lost payment?
 - Third party liabilities?
 - What insurance covers a demand from the buyer to indemnify the buyer's payment to a fraudster?

Insurance for Current Risks

- Ransomware
 - Which policies cover (and when)?
 - Cyberinsurance?
 - Kidnap, ransom, and extortion
 - Property
 - Paying (or not paying) the ransom
 - Business interruption losses
 - Submitting lost income and extra expense claims (including bricked PCs)
 - Forensic accountants (for the carrier and for the insured)
 - Addressing and resolving third party matters



Insurance for Current Risks

- Cloud-Based Risks
 - Coverage questions
 - Cyberinsurance?
 - Scope of coverage for cloud-based losses?
 - Crime insurance?
 - Property insurance?
 - Subrogation issues



Working With Carriers

- Getting Started
 - Where is insurance in your incident response plan?
 - When should you give notice?
 - Should you spend money before consulting with the carrier?



Working With Carriers

- Working Through The Tri-Partite Relationship
 - Panel counsel and vendors
 - Privilege questions
 - Confidentiality concerns
 - Carrier updates
- Reservations of Rights
 - What do they mean?
 - How does it affect privilege, confidentiality, and your defense?



Working With Carriers

- Resolving “Claims”
 - Resolving matters with business partners outside of litigation
 - Resolving litigation
 - Logistics of carrier involvement



Thank you!

Questions?

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