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# The Value of Cyber and Privacy Diligence

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# Presenters



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# Agenda

- Introduction
- Changing attack vectors
- New cybersecurity and privacy requirements
- Litigation and enforcement risks
- The value of good diligence
- Rep and warranty insurance
- Roundtable on lessons learned
- Tips for mitigating risks
- Questions





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# The Risks

# Changing attack vectors



## Nature of attacks

- Ransomware
- Business email compromise
- Attacks on executives

## Diversification of industries

- Financial and healthcare
- Government and higher education
- Technology and manufacturing

# New cybersecurity requirements



- Strengthened standards
  - FTC Safeguards Rule
  - SEC proposed rules for securities entities
  - NIST standards
    - SP 800-171
    - Cybersecurity Framework
- New standards
  - FERC standard on supply chain risks in bulk electric system
- Coming requirements
  - Critical Infrastructure Act of 2022
    - Rulemakings by several agencies for industry sectors
- Trend toward more prescriptive requirements



# New privacy requirements



- New requirements
  - Broad-based state privacy laws
    - California (CCPA/CPRA)
    - Other states
- Coming requirements
  - Children's privacy
    - COPPA
      - Legislation
      - FTC regulation
    - Utah
  - Global requirements
    - Canada
    - India

# Litigation and enforcement risks



- Privacy
  - Illinois Biometrics Information Privacy Act (BIPA)
  - State AGs under privacy laws
  - Federal agencies
    - FTC
    - CFPB
    - HHS
    - Specific authority
    - General authority



# Litigation and enforcement risks



- Cybersecurity
  - Security breach litigation
  - Deceptive claims
    - False Claims Act
    - UDAP or similar claims
  - Contractual liability
  - FTC
  - Shareholder actions



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# The Value of Good Diligence

# The value for all industries



- It's not a matter of “if” but “when”
- Breach of PII can lead to lawsuits and bad PR
- Even loss of non-private data is very disruptive to businesses
  - Lost revenue and potential ransom payment
  - Distraction for management from business goals
  - Wasted time recreating data
  - Angry customers, clients, students
  - Legal costs and crisis communications experts
- Invest in technology and experts – a proactive approach
- Prevent hackers from targeting you

# Issues in Healthcare



- Conducting privacy and security diligence in healthcare transactions
  - What is the current state of the organization's privacy and security compliance program?
  - How is HIPAA privacy compliance implemented?
    - Is there a designated privacy officer?
    - Are required privacy policies and procedures implemented?
    - Is staff regularly trained?
    - Are business associate agreements in place?
    - Are privacy audits conducted?
    - Are there open OCR or State AG investigations?
  - How is HIPAA security compliance implemented?
    - Is there a designated security officer?
    - Are required security policies and procedures implemented?
    - Is there an ongoing risk analysis?
    - How are security incidents managed and addressed?

# Issues in Healthcare



- Due diligence checklist is a good practice
- Key areas to review
  - Privacy and security policies and procedures
  - Breach notification policies and procedures
  - Compliance with patient rights under HIPAA (e.g., access, amendment)
  - Staff training process
  - Auditing and monitoring process
  - Vendor management process and BAAs
  - Physical security
  - Technical security
  - Ongoing risk analysis and risk management program
  - Governance program and leadership involvement in privacy and security compliance programs

# Technology Companies



- Less likely to be compliance-minded
- Data and the processing of data is likely a significant part of the value
- A focus for regulators (and legislators)

# Other Industry Issues



- Companies with little or no personal information can still be targeted
  - DDoS attacks
  - Ransomware against systems
  - Valuable IP
- Industrial and manufacturing companies are usually less regulated



# Representation and Warranty Insurance



- R&W insurance increasing in popularity for transactions
  - Backstops seller's indemnification obligations
  - Minimizes escrow requirements
- Representations concerning cyber risks
  - Fundamental
  - Specific to cybersecurity
- Underwriting process
- Increasing exclusions
  - Breaches, particularly involving government actors
  - Biometrics
- Effective tool, but subject to limitations concerning cyber risks



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# Roundtable

Lessons Learned

# Tips for mitigating risks



- Continually update your diligence lists
- Consider outside resources
  - Legal
  - Technical
  - Other
- Tabletops
- Crisis communications experts



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Questions?



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