

Cyber Liability Solutions

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How is an Insured exposed?

What creates cyber/privacy risk?

- internet connectivity
 - e-commerce
 - business websites and internet advertising
 - customer forums and support/message boards
 - credit card processing/online payment
 - data storage, ISP, website design
 - providing media content
 - paper documents
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What is 1st party and 3rd party?

The Cyber Risks to which an organization is exposed fall into two general categories and Insurance coverage is available for both:

- 1) Those losses suffered by an organization (1st Party Losses) – Data Storage (loss or corrupted), Business Interruption (DoS, system failure), Computer Fraud & Theft, Extortion (rogue employee, criminal extortion), Crisis Management (costs to notify, investigate, monitor)
- 2) An organization's liability to third parties (3rd Party Losses) – Intellectual Property Infringement, Privacy & Customer Data, Errors and Omissions (negligence), Defamation, Malicious Code.

First Party – Loss of Digital Assets

- ▶ We will indemnify you for loss you incur, in excess of the applicable deductible, including special expenses, as a direct result of damage, alteration, corruption, distortion, theft, misuse, or destruction of your digital assets, directly caused by a covered cause of loss.
- ▶ “Coverage for Insured’s own information, data, network, backup, recreation of data.”

First Party–Non Physical Business Interruption

- ▶ Extra expenses incurred to avoid or minimize suspension of business
 - Lost profits (net income)
 - Fixed operating expenses incurred during the period of restoration
 - Costs related to outside consultants and service providers

- “Data System/Network BI Coverage”

First Party – Cyber Extortion

- ▶ Extortion expenses and extortion monies resulting directly from a credible threat during the policy period
- ▶ Typically includes requirement to involve law enforcement, FBI (every reasonable attempt to consult with) prior to payment of extortion monies
- ▶ “Network K&R”

First Party – Security Events Cost

- ▶ Typically includes Sub-limits for:
 - Customer notification of a privacy breach
 - Credit monitoring costs (Opt-in basis)
 - Public relations costs
 - May include items such as funding of a Consumer Redress Fund
- ▶ Highest frequency of claims, thus far
- ▶ “First Party Notification, regulatory fines and penalties, credit monitoring”

First Party – Cyber Terrorism

- ▶ Business interruption and extra expenses directly caused by an act of terrorism
 - ▶ Not typically defined by Certified Act of Terrorism, but rather policy-level definition
 - ▶ Subject to a time retention and a dollar retention
 - ▶ “Coverage for BI/Expenses as a result of cyber Terrorism”
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Third Party –Network Security and Privacy Liability

- ▶ Damages and claim expenses arising from an alleged breach of security or privacy breach
- ▶ 3rd party suits involving Damages
- ▶ Typically includes errors or omissions by outside service providers for whom you are legally liable
- ▶ “Privacy/data breach and security lawsuits”

Third Party – Employee Privacy Liability

- ▶ 3rd party breach of privacy or the breach of privacy regulation involving information about your employees
- ▶ Similar to Network Security/Privacy Liability
- ▶ Includes common law and statutory breaches of privacy
- ▶ “EE information liability coverage”

Third Party – Electronic Media Liability

- ▶ Publishing liability for content on your internet or intranet site
 - Defamation, libel, slander
 - Invasion of privacy
 - Plagiarism, misappropriation
 - Copyright or domain name infringement
 - Excludes any patent infringement
 - “IP Coverage(non-patent)”

Application/Underwriting Process

- ▶ The Application Serves a Dual Role
 - Gathers Information for your underwriter
 - Serves as a Risk Management Tool for the Agent
- ▶ Underwriting Criteria: Revenues, Controls in Place, Nature of Operations, Loss history, Year in Business, Location, Clients, Website Review, Privacy, Employees, etc.

Cyber/Privacy Claims

- Client Information was on a case manager's laptop that was stolen from her office. Files on the laptop contained patient names, social security numbers, dates of birth, addresses, phone numbers, medical condition information and case information.
- Adult day care's computer network is down for 4 days as a result of a Trojan horse attack and are unable to provide any services as a result. There is a need to hire experts to correct their system and get it back to where it was functioning.
- Third-party vendor that hosted a foundation's website experienced a security incident. Customer who donated to the organization may have had their names, dates of birth, and credit card information accessed.

Financial Threats

- ▶ Costs to comply with federal and/or state required notification. Per individual, the average cost per record is estimated at \$203
- ▶ Regulatory proceedings(including fines and penalties) as a result of a privacy breach. This includes HIPAA violations
- ▶ Employees and/or groups of affected individuals suing for damages as a result of a privacy breach
- ▶ Liability for the transmission of malicious code to an outside party
- ▶ Denial of service attack on your network, causing computer system to go down and business interruption expenses
- ▶ Intellectual property/privacy lawsuits. These include libel/slander arising out of content that is on your internet or intranet sites

QUESTIONS????

- ▶ This material does not amend, or otherwise affect, the provisions or coverages of any insurance policy issued by Philadelphia Insurance Companies. It is not a representation that coverage does or does not exist for any particular claim or loss under any such policy.
 - ▶ Coverage depends on the facts and circumstances involved in every claim or loss, all applicable policy provisions, and any applicable law. Availability of coverage referenced in this document can depend on underwriting qualifications and state regulations.
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Directors and Officers Insurance

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Why Purchase D&O Insurance?

- ▶ D&O insurance is protection against a breach of "duty" by the directors and officers.
- ▶ D&O pays for actual or alleged wrong decisions, what the policy calls "wrongful acts."

"any actual or alleged act or omission, error, misstatement, misleading statement, neglect or breach of duty by an Insured Person in the discharge of his/her duties".

- ▶ **D&O Liability covers the directors and officers for their management decisions on behalf of the organization.**
- ▶ **Without this coverage, the D's and O's personal assets are at risk.**

We don't need D&O Insurance.....

OBJECTIONS

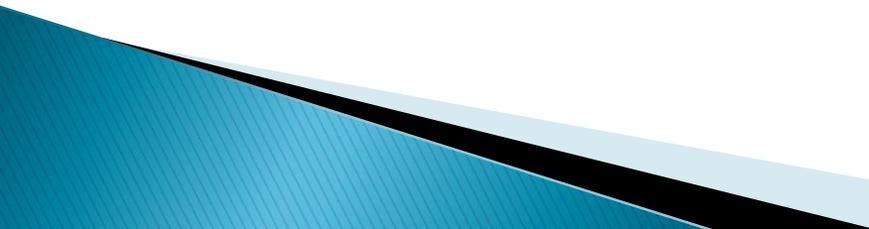
- ▶ My personal Umbrella Policy covers my Non-profit Board service
- ▶ It costs too much!
- ▶ We've never been sued.
- ▶ We have bylaws indemnification provisions.

RESPONSE

- ▶ Coverage provided is not for managerial malpractice
- ▶ Average defense costs are very high
- ▶ US is the most litigious nation in the world
- ▶ Where is the money for the entity to operate after indemnification?

Where do D&O claims come from?

Sources of D&O Claims:

- ▶ Shareholders and other investors 46.6%
 - ▶ Past, Current or Prospective Employee 23.9%
 - ▶ Customers, clients, consumer groups 19.4%
 - ▶ Competitors, suppliers, and other contractor 5.5%
 - ▶ Government and regulatory agencies 2.4%
 - ▶ Other 3rd party claimants 3.0%
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How much do Claims Cost?

- Average cost:
 - \$308,475 per Claim
 - Without D&O Coverage
 - \$408,469
 - With D&O Coverage
 - \$129,625

Average cost = settlement, judgment, and legal fees.

What is covered?

- ▶ **Breach of Duties**
 - Duty of Care: act in Prudent Manner and in Good Faith
 - Duty of Loyalty: act in the best interests of the organization
 - Duty of Obedience: act within the corporate charter and obey the law
 - Duty of Disclosure: reveal all relevant information they may have about a transaction or decision.
- ▶ Mis-management – Business Judgment Rule
- ▶ Breach of Fiduciary Duty
- ▶ Error & Omission (broad)
- ▶ Improper Discloser or Failure to Disclose
- ▶ Other allegations surrounding the boards decisions

How to guard against lawsuits?

- ▶ Informed and regular review of financial statements
 - ▶ Regular attendance at board meetings
 - ▶ Avoid conflicts of interest
 - ▶ Have a clear understanding of the board's role in personnel situations.
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Non-Profit Claim examples

- ▶ 2 years after 5 acres of property was donated to a foundation, the donor sought to revoke his donation. The Insured had already begun to develop the property as a residence for disabled children. While the judge found in favor of the Insured - **\$100K in defense costs only.**
- ▶ A potential vendor alleged Bidding was rigged when they did not receive a contract for an annual fund raising event. **\$55K in Defense costs.**
- ▶ Members of an association filed a lawsuit alleging the recent election of a new Executive Director did not follow the correct procedures outlined in the association's by-laws. Members argued that the majority vote required was not obtained and the by-laws were modified to suit the self-interest of the board. **Defense costs and Settlement exceeded \$75,000.**
- ▶ A grant making foundation receiving private donations was alleged to have used those funds for purposes not associated with the foundation's underlying mission. A group of supporters sued the foundation's board alleging misappropriation of funds and breach of duty. **\$65,000 defense costs only.**

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