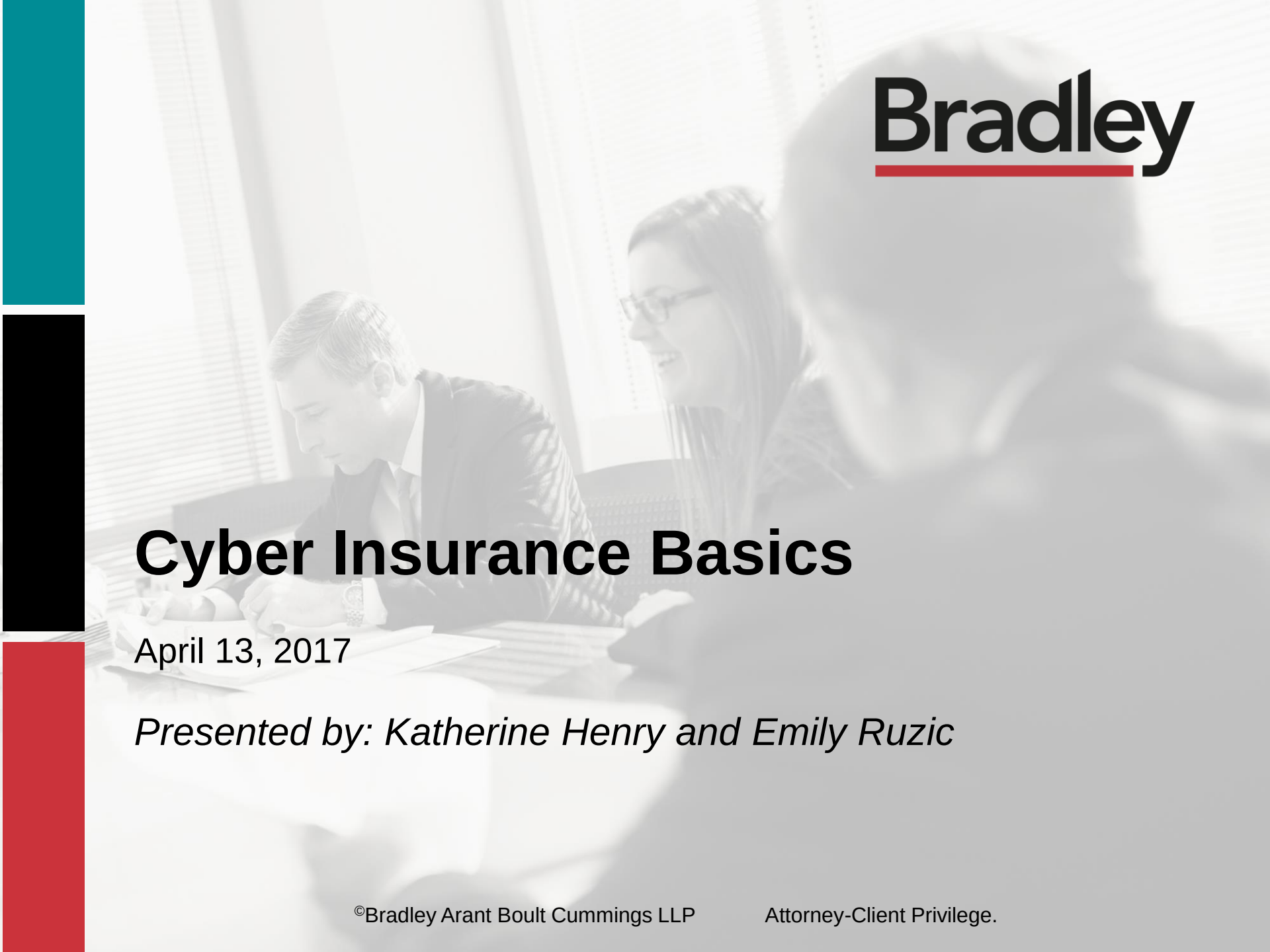

Cyber Insurance Basics

April 13, 2017

Presented by: Katherine Henry and Emily Ruzic

Overview

- Cyber events affect all sectors and all sizes
- Costs of a cyber event
- Traditional coverage rarely responds to cyber events
- Cyber coverage
- Cyber-related laws
- Market review
- Application and underwriting
- Last thoughts

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CYBER EVENTS AFFECT ALL SECTORS AND ALL SIZES

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Large Entities with Cyber Issues in 2016

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Even the U.S. Government Is Not Immune

FAFSA
U.S. DEPARTMENT OF EDUCATION
FEDERAL STUDENT AID

IRS
Department of the Treasury
Internal Revenue Service

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Small and Mid-Sized Businesses Face Increased Risk for Cyber Issues

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COSTS OF A CYBER EVENT

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Potential Costs

- Average cost of a breach is $3.79 million
- Average costs are continuing to increase
- Types of costs:
  - First-party costs
  - Third-party costs

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First-Party Costs

- Forensic investigation
- Legal advice to determine notification and regulatory obligations
- Notifying customers/users of the breach
- Credit monitoring/call centers
- Public relations
- Lost profits and extra expense during network shutdown (business interruption)

Third-Party Costs

- Legal defense
- Settlements, damages, and judgments
- Liability to banks for re-issuing credit cards
- Response to regulatory inquiries
- Regulatory fines and penalties (including Payment Card Industry fines)

TRADITIONAL COVERAGE RARELY RESPONDS TO CYBER EVENTS

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Property Exclusion

EXCLUSION -- DATA BREACH LIABILITY
PERSONAL AND ADVERTISING INJURY

The Commercial Liability Coverages are amended as follows. All other "terms" of the policy apply, except as amended by this endorsement.

COMMERCIAL LIABILITY COVERAGES

Under Coverage P -- Personal and Advertising Injury Liability, the following exclusion is added:

"We" do not pay for "personal and advertising injury" arising out of disclosure of or access to private or confidential information belonging to any person or organization.

This exclusion also applies to "damages" for any expenses incurred by "you" or others arising out of disclosure of or access to private or confidential information belonging to any person or organization, including expenses for credit monitoring, notification, forensic investigation, and legal research.

Fidelity and Crime Exclusion

Crime Coverage Part

III. EXCLUSIONS

A. This Coverage Part does not cover:

3. loss resulting from unauthorized disclosure of the **Insured's** confidential information including, but not limited to, patents, trade secrets, processing methods or customer lists or unauthorized use or disclosure of confidential information of another person or entity which is held by the **Insured** including, but not limited to, financial, personal, credit card or similar non-public information;

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CGL Exclusion

A. Exclusion **B.1.q.** of **Section II – Liability** is replaced by the following:

This insurance does not apply to:

q. Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability

(1) Damages, other than damages because of "personal and advertising injury", arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or

(2) Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraph **(1)** or **(2)** above.

However, unless Paragraph **(1)** above applies, this exclusion does not apply to damages because of "bodily injury".

As used in this exclusion, electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data.

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D&O Exclusion

Management and Entity Liability Coverage Part

IV. EXCLUSIONS

The Underwriter shall not be liable under this Coverage Part for **Loss** on account of, and shall not be obligated to defend, any **Claim** made against any **Insured**:

6. based upon, arising out of or attributable to any actual or alleged infringement of copyright, patent, trademark, trade name, trade dress or service mark, or the actual or alleged misappropriation of ideas or trade secrets or the unauthorized disclosure of or access to confidential information; or

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CYBER COVERAGE

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Two Approaches to Cyber Coverage

- Cyber endorsement to existing policy
- Stand-alone cyber policy

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Cyber Endorsements

- Three types
  - Services only (no risk transfer)
  - Services plus breach response coverage
  - Services plus breach response plus liability coverage
- Limits typically low
- Low additional premium
- Tied to terms offered by existing insurer (no shopping the market)

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Stand-Alone Cyber Policies

- No standard forms
- Four types of coverage
  - Remediation
  - Liability
  - Regulatory
  - Payment Card

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Remediation Coverage

- Coverage for response costs following a data breach
  - Investigation
  - Public relations
  - Customer notification
  - Credit monitoring
- May designate approved vendors or require insurer's written consent for other vendors
- May sublimit breach response costs

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Liability Coverage

- Network Security, Privacy, and Media Liability
  - Network Security: unauthorized access of computer systems, transmission of virus or malicious code, and denial of service
  - Privacy: confidential information exposed by a hacker, rogue employee, or lost device
  - Media Liability: advertising injury and infringement of copyright, trademark, or domain name
- Typically includes defense and indemnity costs
- Typically excludes bodily injury and property damage

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Regulatory Coverage

- Liability coverage for regulatory violations
- Typically includes investigation and defense costs
- Can include fines and penalties coverage

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Payment Card Coverage

- Covers liability to credit card issuers arising out of unauthorized disclosure of credit card information
- Can include: forensic services, fraud charge reimbursement, PCI fines and penalties, and card reissuance costs
- Typically available by endorsement
- Typically requires actual compliance with Payment Card Industry (PCI) standards
  - Efforts to comply generally insufficient

Types of Data Covered

- Some insurers specify types of data covered, others do not
- Types of data potentially covered:
  - Personally identifiable information
  - Nonpublic data, such as corporate information
  - Non-electronic data, such as paper records and printouts

Beware Security Standard Exclusions

- Failure to reasonably comply with industry standards
- Failure to comply with security procedures identified in application
- Failure to follow Minimum Required Practices

Failure to Reasonably Comply with Industry Standards

IV. EXCLUSIONS

This **Policy** does not insure against losses alleging, based on, arising out of or attributable to, directly or indirectly, consequently or in any sequence whatsoever:

E. any failure to reasonably maintain or update **Your Computer System**, including the failure to reasonably use, maintain, upgrade or update **Network Operations Security**.

III. DEFINITIONS

N. Network Operations Security includes the design, maintenance and implementation of written network security plans and policies, as well as the use of hardware, software and firmware including but not limited to firewalls, filters, routers, intrusion detection software, antivirus software, and automated password management applications and other authentication mechanisms.

ACE Digital DNAsm

Network Risk Insurance Program

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Failure to Comply With Security Procedures Identified in Application

IV. EXCLUSIONS

We will not be liable for expenses, costs, income loss, **interruption expenses**, **special expenses**, **extortion monies**, **extortion expenses** or other **losses** based on, alleging, arising out of or from, or attributable, directly or indirectly, to:

D. Failure to ensure that the **computer system** is reasonably protected by security practices and systems maintenance procedures that are equal to or superior to those disclosed in the **proposal**;

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Failure to Follow Minimum Required Practices

O. Failure to Follow Minimum Required Practices

based upon, directly or indirectly arising out of, or in any way involving:

1. Any failure of an Insured to continuously implement the procedures and risk controls identified in the Insured's application for this Insurance and all related information submitted to the Insurer in conjunction with such application whether orally or in writing;
2. Failure to follow (in whole or part) any Minimum Required Practices that are listed in Minimum Required Practices Endorsement; or

3. The Insured's failure to meet any service levels, performance standards or metrics;

Item 3 above shall apply only to Insureds whose services are required to satisfy service levels, performance standards or metrics.

This exclusion shall not apply to:

1. an Insured Person's negligent circumvention of controls; or
2. an Insured Person's intentional circumvention of controls where such circumvention was not authorized by the Insured;

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Beware Security Standard Exclusions

- Broad and therefore dangerous exclusions
- Good news: many insurers are moving away from these exclusions
- Best practices: avoid these exclusions

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Claims Reporting and Counsel Selection

- Claims-made policies
- Extended reporting period options important
- Counsel selection similar to other lines of coverage
  - Insurers typically reserve the right to select or approve counsel
  - As with other policies, these provisions may be negotiable

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CYBER-RELATED LAWS

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Federal Law

- Cybersecurity Information Sharing Act of 2015
  - Authorizes companies to monitor and implement defensive measures on their own information systems to combat cyber threats
  - Provides protections to encourage companies to voluntarily share information
    - Protections from liability
    - Non-waiver of privilege
    - Protections from FOIA disclosure
- DOJ and Department of Homeland Security issued Guidance in 2016 to assist private sector in understanding law

State Regulations

- New York implemented cyber-security regulations effective March 1, 2017
- New regulations require financial and insurance companies to:
  - Take steps to protect their networks and customer data from hackers
  - Disclose cyber events to state regulators
  - Scrutinize security at third-party vendors
  - Perform risk assessments
  - Certify compliance annually

Future Laws

- NAIC Task Force developing Insurance Data Security Model Law
- Third version released February 27, 2017
- Establishes data security standards for insurers, brokers, agents, and their service providers
- State legislatures could ultimately adopt model law

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MARKET REVIEW

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Many Insurers Now in Cyber-Risk Market

Ace (now Chubb)	AIG
Allied World	Arch
Argo Pro	Ascent
AXIS	Beazley
Berkshire Hathaway	CFC
Chubb	CNA
Cyber Plus	eFranchisorSuite
Hanover	The Hartford
Hiscox	Hudson
Ironshore	Liberty International
Liberty Specialty	Markel
NAS	OneBeacon
Philadelphia	RSUI
Safehold Special Risk	Travelers
V.O. Schinnerer	XL Catlin

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Market Is Growing

- 2016 annual gross written premium: $3.25 billion
- 2015 annual gross written premium: $2.75 billion
- Reinsurers expressing interest in this risk
- Significant capacity still exists
- Higher limits can be stacked

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Market for Small to Midsized Insureds

- Friendlier than market for larger insureds
- More competitive rates because insurers seeking market foothold
- Business agreements may require cyber coverage
- Beware indemnity requirements that exceed scope and amount of available cyber insurance

APPLICATION AND UNDERWRITING

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Applying for Cyber Insurance

- Underwriting standards in their infancy
- Applications ask for insured's cyber loss prevention protocols
- Value of applications questionable but critical to coverage
- Insured must notify insurer of changes to cyber loss prevention protocols

Security Assessment Requirements

- Insurers typically offer security assessments as part of application process
- Many insurers require assessments of applicant's compliance with PCI security standards before offering PCI coverage
- Favorable assessment results can lower premium
- Unfavorable assessment can preclude coverage

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LAST THOUGHTS

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Last Thoughts

- Assess your company's risks
- Assess your company's insurance program
- Assess your company's contractual undertakings
- Explore availability and cost of cyber insurance
- Cyber insurance available and less costly than you may think
- Risks are real and here to stay

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QUESTIONS?

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Additional Information

We are available to present on this or other insurance coverage related topics to your company or by webinar. Contact Katherine Henry for more information.

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