

# Cyber Insurance: Buyer's Expectations vs. Coverage Realities— Assess & Understand Your Exposure Before Requesting Coverage Terms

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# Two Forms of "Cyber" Exposure

- Security
- Privacy

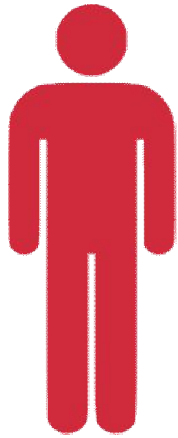
# What Organization Activities and Functions tend to be more Aligned with “Security” vs. “Privacy” Exposure

- **Security** (Systems/IT)
  - Network systems, servers
  - Security protocols in place to prevent & detect intrusion
  - Secure (encrypted!) mobile devices, smart phones, laptops, any form of equipment storing or transmitting PHI

# What Organization Activities and Functions tend to be more Aligned with “Security” vs. “Privacy” Exposure

- **Privacy** (Compliance/Training/Education)
  - Culture of awareness needed with everyone being advised that they have an individual responsibility to protect PHI and be aware of threats
  - Ongoing need for dialogue/communication internally at all levels of organization, especially “front line” employees
    - Often the sources of “oops” breach events (mistakes, human error, negligence)

# 1<sup>st</sup> Party v. 3<sup>rd</sup> Party



Me



You

# First Party Coverage

- Underwriting Focus/Concerns
  - Number of records (PHI)
  - PHI Venues/States potentially implicated by a breach
    - Multi-state notification - individual state law compliance
  - Overall strength of organization privacy & security protocols
  - More objectively quantifiable than 3<sup>rd</sup> Party Liability
    - Costs may be correlated to number of records potentially breached

# Third Party Liability Coverage

- Underwriting Focus/Concerns
  - Overall organization privacy, security, & compliance profile
  - Size of Organization
  - PHI Venues/States potentially implicated by a breach
    - Severity & Frequency Trends - Litigation
  - Privacy & security awareness/training/preventive steps already in place
    - Critical to mitigate liability at the point of litigation and/or government audit/inquiry
    - “Paper trail” should ideally be as long as possible demonstrating ongoing, longstanding due diligence, and use of resources to protect PHI commensurate with an organization’s means to do so

# Cyber Liability Coverage

## 3<sup>rd</sup> Party Coverage

- **Network & Security Liability**

Liability coverage for failing to prevent a Security Breach or a Privacy Breach

- **Privacy Liability**

Liability coverage for failing to protect personal information (electronic or non-electronic) in their care custody and control

- **Media Liability**

Intellectual Property and Personal Injury liability from an error or omission in content (website, electronic publishing, etc.)

- **Regulatory Liability**

Coverage for lawsuits or investigations by Federal, State, or Foreign regulators relating to Privacy Laws



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# Extortion Coverage

- **Cyber Extortion**

Money paid due to threats made regarding an intent to fraudulently transfer funds, destroy data, introduce a virus or attack on computer system, or disclose electronic data/information



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# Cyber Liability Coverage

## Negotiated Vendor Rates

- Breach of approximately 5,000 records with two years of credit monitoring

Service	Standard Vendor Cost*	Carrier Negotiated Vendor Cost*	Savings
Legal Assistance with Notification Letters	\$24,190	\$10,000	-59%
Print/Mail Letters	\$63,551	\$56,341	-11%
Call Center Services	\$118,642	\$66,852	-44%
Credit Monitoring	\$683,996	\$317,297	-54%
<b>Total</b>	<b>\$890,379</b>	<b>\$450,490</b>	<b>-49%</b>

\*Cost can vary depending on vendor.

# Recent/Key Legal Landscape Developments: Potential Coverage Implications

- *P.F. Chang's China Bistro, Inc. v. Federal Insurance Company*, (May, 2016)
  - No coverage for credit card fines/penalties due to "liability assumed under contract" cyber policy exclusion
- *Travelers v. Portal Health Care* (April, 2016)
  - Carrier required to defend class action under General Liability (non-cyber) insurance coverage
- *Ameriforge Group Inc., d/b/a AF Global Corporation v. Federal Insurance Co. and Chubb & Son*, (Feb., 2016)
  - Ongoing dispute – "crime" insurance policy - funds transfer resulting from social engineering fraud scheme; what is a "financial instrument?"
- *Remijas v. Neiman Marcus Group* (7<sup>th</sup> Cir., July, 2015)
  - Potential Easier Continuation of Class Action (i.e., Defense Expenses!) in 7<sup>th</sup> Circuit (select districts in IL, IN and WI)

# Mitigate Liability and Position Your Organization as Strongly As Possible *Before* Applying for Coverage

- Underwriting assessments: assessing privacy vs. security “risk profiles” of applicants
  - Documented privacy policies and procedures in place, with evidence of ongoing and recent “test run” or “re-evaluation”
  - Incident Response Plan, Business Associate Agreement(s) in place and able to be quantified/explained to carrier
    - *KNOW YOUR RISKS AND BE ABLE TO ARTICULATE YOUR PLAN TO ADDRESS THEM*
  - Demonstrable plan for use of organization resources (commensurate with ability to do so) dedicated to Privacy & IT/Information Security
    - i.e., Chief Privacy Office, Chief Information Security Officer with direct access to C-Suite

# Key Takeaways

- Know Your Strengths/Weaknesses
  - Identify Them and Acknowledge Ongoing Plans to Address
- What to Consider when Asking for The “Right Mix” of Coverage Terms on Your Cyber Policy
  - Seek Maximum Flexibility in using Policy Limits (1<sup>st</sup> & 3<sup>rd</sup> Party Coverage)
  - Avoid Small Sublimits in 1<sup>st</sup> Party Coverage
  - Examine Exclusions Carefully
  - Know the Breach Response Partners You Want on Your Team (Confirm Carrier is on Board Before Your Policy is Bound)

# Questions?

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