

BAIRD HOLM LLP

TECHNOLOGY & DATA PROTECTION FORUM

AGENDA

8:30 a.m.
Registration Opens

9:00 a.m. - 9:45 a.m.
Early Bird Session:
Security Risk Assessments 101
Abigail T. Mohs, Michael W. Chase and
James E. O'Connor

10:00 a.m. - 10:15 a.m.
Welcome and Introduction
Vickie B. Ahlers and James E. O'Connor

10:15 a.m. - 11:00 a.m.
Emerging Threats:
Security in the New World
Ron Woerner, Bellevue University

11:00 a.m. - 12:30 p.m.
Table Top Exercise:
What Would You Do?
Eli A. Rosenberg, AriAnna C. Goldstein,
Grayson J. Derrick and Krista M. Eckhoff

12:30 p.m. - 2:30 p.m.
Working Lunch and Panel Presentation
Grab a boxed lunch and join us for a
panel discussion about hot topics,
including an audience Q&A.

Hot Topics:

1. Cyber Litigation Update
 2. Employment Law Update
 3. CFB Financial Update
 4. Indemnification Issues
 5. EU Data Protection Update
-

2:30 p.m. - 2:45 p.m. **Break**

2:45 p.m. - 3:45 p.m.
Insurance Retrospective
Jonathan J. Wegner, James E. O'Connor
and Justin W. Firestone

3:45 p.m. - 4:45 p.m.
CEO in the Hot Seat:
Leadership in the Face of a Data Breach
Moderated by Vickie B. Ahlers

4:45 p.m. **Adjourn and Reception**
Please join us for complimentary
cocktails and appetizers immediately
following the program.

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Early Bird Session:

Security Risk Assessments 101

Abigail T. Mohs, Michael W. Chase and
James E. O'Connor

Security Risk Assessments 101

Michael W. Chase
Abigail T. Mohs
James E. O'Connor

Agenda

- Background/regulatory requirements
- "Reviews/evaluations" vs. "security risk assessments"
- Conducting a security risk assessment
 - Who; What; When; Where; Why; and How
- Common problems/traps to avoid

Background

- Now, more than ever, organizations are vulnerable to unanticipated information security threats
- Need to understand the risks to critical information and assets
- Will guide business decisions
 - Budgets/investments, human resources, and processes

Background

- IT department *and other stakeholders* (including the board, management, and other employees) need to understand the complex systems and ensure that all aspects of security are addressed
 - Assets, threats/vulnerabilities, awareness, prioritization

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Background

- All information security frameworks require assessment of risks
- Many organizations now require a risk assessment as a condition of doing business
- Federal and state regulations require information security risk assessments

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Regulatory Requirements

- Sarbanes-Oxley Act of 2002
 - Modern financial reporting systems depend on information technology
 - Section 404: must assess the effectiveness of internal controls (and report to SEC)
- Gramm-Leach-Bliley Act
 - Section 501: protection of nonpublic personal information

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Regulatory Requirements

- HIPAA Security Rule - 45 CFR 164.308(a)(1):
 - Covered entity (and business associates) must conduct an accurate and thorough assessment of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of the ePHI held by the covered entity (or business associate)

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Let's Get Started

So ... what is a Security Risk Assessment?

Let's begin with what is NOT a Security Risk Assessment

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"Other" Frameworks

- Gap assessments
- Information security review
- Security evaluation
- Other processes performed within the IT department with little or no input from others

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Security Risk Assessment Process

- Identify IT assets
- Data classification
- Identify threats and vulnerabilities
- Likelihood of occurrence
- Potential impact

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HealthIT.gov: SRA Tool

ONC in collaboration with HHS OCR developed a downloadable SRA Tool.

<https://www.healthit.gov/providers-professionals/security-risk-assessment-tool>

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Security Risk Analysis (sample)

Threat	Asset	Business Function	Control	Impact	Threat	Asset	Business Function	Control	Impact	Threat	Asset	Business Function	Control	Impact	Threat	Asset	Business Function	Control	Impact
Threat 1	Asset 1	Business Function 1	Control 1	Impact 1	Threat 2	Asset 2	Business Function 2	Control 2	Impact 2	Threat 3	Asset 3	Business Function 3	Control 3	Impact 3	Threat 4	Asset 4	Business Function 4	Control 4	Impact 4
Threat 5	Asset 5	Business Function 5	Control 5	Impact 5	Threat 6	Asset 6	Business Function 6	Control 6	Impact 6	Threat 7	Asset 7	Business Function 7	Control 7	Impact 7	Threat 8	Asset 8	Business Function 8	Control 8	Impact 8
Threat 9	Asset 9	Business Function 9	Control 9	Impact 9	Threat 10	Asset 10	Business Function 10	Control 10	Impact 10	Threat 11	Asset 11	Business Function 11	Control 11	Impact 11	Threat 12	Asset 12	Business Function 12	Control 12	Impact 12
Threat 13	Asset 13	Business Function 13	Control 13	Impact 13	Threat 14	Asset 14	Business Function 14	Control 14	Impact 14	Threat 15	Asset 15	Business Function 15	Control 15	Impact 15	Threat 16	Asset 16	Business Function 16	Control 16	Impact 16
Threat 17	Asset 17	Business Function 17	Control 17	Impact 17	Threat 18	Asset 18	Business Function 18	Control 18	Impact 18	Threat 19	Asset 19	Business Function 19	Control 19	Impact 19	Threat 20	Asset 20	Business Function 20	Control 20	Impact 20
Threat 21	Asset 21	Business Function 21	Control 21	Impact 21	Threat 22	Asset 22	Business Function 22	Control 22	Impact 22	Threat 23	Asset 23	Business Function 23	Control 23	Impact 23	Threat 24	Asset 24	Business Function 24	Control 24	Impact 24
Threat 25	Asset 25	Business Function 25	Control 25	Impact 25	Threat 26	Asset 26	Business Function 26	Control 26	Impact 26	Threat 27	Asset 27	Business Function 27	Control 27	Impact 27	Threat 28	Asset 28	Business Function 28	Control 28	Impact 28
Threat 29	Asset 29	Business Function 29	Control 29	Impact 29	Threat 30	Asset 30	Business Function 30	Control 30	Impact 30	Threat 31	Asset 31	Business Function 31	Control 31	Impact 31	Threat 32	Asset 32	Business Function 32	Control 32	Impact 32
Threat 33	Asset 33	Business Function 33	Control 33	Impact 33	Threat 34	Asset 34	Business Function 34	Control 34	Impact 34	Threat 35	Asset 35	Business Function 35	Control 35	Impact 35	Threat 36	Asset 36	Business Function 36	Control 36	Impact 36
Threat 37	Asset 37	Business Function 37	Control 37	Impact 37	Threat 38	Asset 38	Business Function 38	Control 38	Impact 38	Threat 39	Asset 39	Business Function 39	Control 39	Impact 39	Threat 40	Asset 40	Business Function 40	Control 40	Impact 40
Threat 41	Asset 41	Business Function 41	Control 41	Impact 41	Threat 42	Asset 42	Business Function 42	Control 42	Impact 42	Threat 43	Asset 43	Business Function 43	Control 43	Impact 43	Threat 44	Asset 44	Business Function 44	Control 44	Impact 44
Threat 45	Asset 45	Business Function 45	Control 45	Impact 45	Threat 46	Asset 46	Business Function 46	Control 46	Impact 46	Threat 47	Asset 47	Business Function 47	Control 47	Impact 47	Threat 48	Asset 48	Business Function 48	Control 48	Impact 48
Threat 49	Asset 49	Business Function 49	Control 49	Impact 49	Threat 50	Asset 50	Business Function 50	Control 50	Impact 50	Threat 51	Asset 51	Business Function 51	Control 51	Impact 51	Threat 52	Asset 52	Business Function 52	Control 52	Impact 52
Threat 53	Asset 53	Business Function 53	Control 53	Impact 53	Threat 54	Asset 54	Business Function 54	Control 54	Impact 54	Threat 55	Asset 55	Business Function 55	Control 55	Impact 55	Threat 56	Asset 56	Business Function 56	Control 56	Impact 56
Threat 57	Asset 57	Business Function 57	Control 57	Impact 57	Threat 58	Asset 58	Business Function 58	Control 58	Impact 58	Threat 59	Asset 59	Business Function 59	Control 59	Impact 59	Threat 60	Asset 60	Business Function 60	Control 60	Impact 60
Threat 61	Asset 61	Business Function 61	Control 61	Impact 61	Threat 62	Asset 62	Business Function 62	Control 62	Impact 62	Threat 63	Asset 63	Business Function 63	Control 63	Impact 63	Threat 64	Asset 64	Business Function 64	Control 64	Impact 64
Threat 65	Asset 65	Business Function 65	Control 65	Impact 65	Threat 66	Asset 66	Business Function 66	Control 66	Impact 66	Threat 67	Asset 67	Business Function 67	Control 67	Impact 67	Threat 68	Asset 68	Business Function 68	Control 68	Impact 68
Threat 69	Asset 69	Business Function 69	Control 69	Impact 69	Threat 70	Asset 70	Business Function 70	Control 70	Impact 70	Threat 71	Asset 71	Business Function 71	Control 71	Impact 71	Threat 72	Asset 72	Business Function 72	Control 72	Impact 72
Threat 73	Asset 73	Business Function 73	Control 73	Impact 73	Threat 74	Asset 74	Business Function 74	Control 74	Impact 74	Threat 75	Asset 75	Business Function 75	Control 75	Impact 75	Threat 76	Asset 76	Business Function 76	Control 76	Impact 76
Threat 77	Asset 77	Business Function 77	Control 77	Impact 77	Threat 78	Asset 78	Business Function 78	Control 78	Impact 78	Threat 79	Asset 79	Business Function 79	Control 79	Impact 79	Threat 80	Asset 80	Business Function 80	Control 80	Impact 80
Threat 81	Asset 81	Business Function 81	Control 81	Impact 81	Threat 82	Asset 82	Business Function 82	Control 82	Impact 82	Threat 83	Asset 83	Business Function 83	Control 83	Impact 83	Threat 84	Asset 84	Business Function 84	Control 84	Impact 84
Threat 85	Asset 85	Business Function 85	Control 85	Impact 85	Threat 86	Asset 86	Business Function 86	Control 86	Impact 86	Threat 87	Asset 87	Business Function 87	Control 87	Impact 87	Threat 88	Asset 88	Business Function 88	Control 88	Impact 88
Threat 89	Asset 89	Business Function 89	Control 89	Impact 89	Threat 90	Asset 90	Business Function 90	Control 90	Impact 90	Threat 91	Asset 91	Business Function 91	Control 91	Impact 91	Threat 92	Asset 92	Business Function 92	Control 92	Impact 92
Threat 93	Asset 93	Business Function 93	Control 93	Impact 93	Threat 94	Asset 94	Business Function 94	Control 94	Impact 94	Threat 95	Asset 95	Business Function 95	Control 95	Impact 95	Threat 96	Asset 96	Business Function 96	Control 96	Impact 96
Threat 97	Asset 97	Business Function 97	Control 97	Impact 97	Threat 98	Asset 98	Business Function 98	Control 98	Impact 98	Threat 99	Asset 99	Business Function 99	Control 99	Impact 99	Threat 100	Asset 100	Business Function 100	Control 100	Impact 100

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Project Information		Project Dates		Project Location		Project Description		Project Objectives		Project Results		Project Impact		Project Sustainability	
Project Name	Project ID	Start Date	End Date	Project Location	Project Description	Project Objectives	Project Results	Project Impact	Project Sustainability	Project Name	Project ID	Start Date	End Date	Project Location	Project Description
Project A	1	2020-01-01	2020-03-31	Project A Location	Project A Description	Project A Objectives	Project A Results	Project A Impact	Project A Sustainability	Project B	2	2020-04-01	2020-06-30	Project B Location	Project B Description
Project C	3	2020-07-01	2020-09-30	Project C Location	Project C Description	Project C Objectives	Project C Results	Project C Impact	Project C Sustainability	Project D	4	2020-10-01	2020-12-31	Project D Location	Project D Description
Project E	5	2021-01-01	2021-03-31	Project E Location	Project E Description	Project E Objectives	Project E Results	Project E Impact	Project E Sustainability	Project F	6	2021-04-01	2021-06-30	Project F Location	Project F Description
Project G	7	2021-07-01	2021-09-30	Project G Location	Project G Description	Project G Objectives	Project G Results	Project G Impact	Project G Sustainability	Project H	8	2021-10-01	2021-12-31	Project H Location	Project H Description
Project I	9	2022-01-01	2022-03-31	Project I Location	Project I Description	Project I Objectives	Project I Results	Project I Impact	Project I Sustainability	Project J	10	2022-04-01	2022-06-30	Project J Location	Project J Description
Project K	11	2022-07-01	2022-09-30	Project K Location	Project K Description	Project K Objectives	Project K Results	Project K Impact	Project K Sustainability	Project L	12	2022-10-01	2022-12-31	Project L Location	Project L Description
Project M	13	2023-01-01	2023-03-31	Project M Location	Project M Description	Project M Objectives	Project M Results	Project M Impact	Project M Sustainability	Project N	14	2023-04-01	2023-06-30	Project N Location	Project N Description
Project O	15	2023-07-01	2023-09-30	Project O Location	Project O Description	Project O Objectives	Project O Results	Project O Impact	Project O Sustainability	Project P	16	2023-10-01	2023-12-31	Project P Location	Project P Description
Project Q	17	2024-01-01	2024-03-31	Project Q Location	Project Q Description	Project Q Objectives	Project Q Results	Project Q Impact	Project Q Sustainability	Project R	18	2024-04-01	2024-06-30	Project R Location	Project R Description
Project S	19	2024-07-01	2024-09-30	Project S Location	Project S Description	Project S Objectives	Project S Results	Project S Impact	Project S Sustainability	Project T	20	2024-10-01	2024-12-31	Project T Location	Project T Description
Project U	21	2025-01-01	2025-03-31	Project U Location	Project U Description	Project U Objectives	Project U Results	Project U Impact	Project U Sustainability	Project V	22	2025-04-01	2025-06-30	Project V Location	Project V Description
Project W	23	2025-07-01	2025-09-30	Project W Location	Project W Description	Project W Objectives	Project W Results	Project W Impact	Project W Sustainability	Project X	24	2025-10-01	2025-12-31	Project X Location	Project X Description
Project Y	25	2026-01-01	2026-03-31	Project Y Location	Project Y Description	Project Y Objectives	Project Y Results	Project Y Impact	Project Y Sustainability	Project Z	26	2026-04-01	2026-06-30	Project Z Location	Project Z Description
Project AA	27	2026-07-01	2026-09-30	Project AA Location	Project AA Description	Project AA Objectives	Project AA Results	Project AA Impact	Project AA Sustainability	Project AB	28	2026-10-01	2026-12-31	Project AB Location	Project AB Description
Project AC	29	2027-01-01	2027-03-31	Project AC Location	Project AC Description	Project AC Objectives	Project AC Results	Project AC Impact	Project AC Sustainability	Project AD	30	2027-04-01	2027-06-30	Project AD Location	Project AD Description
Project AE	31	2027-07-01	2027-09-30	Project AE Location	Project AE Description	Project AE Objectives	Project AE Results	Project AE Impact	Project AE Sustainability	Project AF	32	2027-10-01	2027-12-31	Project AF Location	Project AF Description
Project AG	33	2028-01-01	2028-03-31	Project AG Location	Project AG Description	Project AG Objectives	Project AG Results	Project AG Impact	Project AG Sustainability	Project AH	34	2028-04-01	2028-06-30	Project AH Location	Project AH Description
Project AI	35	2028-07-01	2028-09-30	Project AI Location	Project AI Description	Project AI Objectives	Project AI Results	Project AI Impact	Project AI Sustainability	Project AJ	36	2028-10-01	2028-12-31	Project AJ Location	Project AJ Description
Project AK	37	2029-01-01	2029-03-31	Project AK Location	Project AK Description	Project AK Objectives	Project AK Results	Project AK Impact	Project AK Sustainability	Project AL	38	2029-04-01	2029-06-30	Project AL Location	Project AL Description
Project AM	39	2029-07-01	2029-09-30	Project AM Location	Project AM Description	Project AM Objectives	Project AM Results	Project AM Impact	Project AM Sustainability	Project AN	40	2029-10-01	2029-12-31	Project AN Location	Project AN Description
Project AO	41	2030-01-01	2030-03-31	Project AO Location	Project AO Description	Project AO Objectives	Project AO Results	Project AO Impact	Project AO Sustainability	Project AP	42	2030-04-01	2030-06-30	Project AP Location	Project AP Description
Project AQ	43	2030-07-01	2030-09-30	Project AQ Location	Project AQ Description	Project AQ Objectives	Project AQ Results	Project AQ Impact	Project AQ Sustainability	Project AR	44	2030-10-01	2030-12-31	Project AR Location	



Reasonably Foreseeable Internal and External Threats	Likelihood of Occurrence	Potential Business Impact	Incident Risk Rating	Description of Current Policies, Procedures, Controls	Adequacy of Current Policies, Procedures, and Controls (D=Self-Inflicted, U=Unintentional, O=Opportunity for Improvement)	Mitigation Plan	Priority	Responsibility	Timeline
Lost mobile device	Medium-High	20-very high	90-high	None - Sensitive information is allowed on unsecured mobile devices	Unsatisfactory	encrypt all mobile devices	High	Michael Chase	Deadline 4/20/16



Reasonably Foreseeable Internal and External Threats	Likelihood of Occurrence	Potential Business Impact	Inherent Risk Rating	Description of Current Policies, Procedures, Controls	Adequacy of Current Policies, Procedures, and Controls (D=Self-Inflicted, U=Unsatisfactory, O=Opportunity for Improvement)	Mitigation Plan	Priority	Responsibility	Timeline
Lost mobile device	Medium-High	Very High	High	None - Sensitive information is allowed on unsecured mobile	Unsatisfactory	Encrypt all mobile devices	High	Michael Chase	Deadline 4/20/20



Threats, Vulnerabilities and Malware - HMSSS

File Edit View Window Help CMD

http://10.10.10.10:8080/hmsss

Home Assessment Lifecycle Resources & Tools Privacy & Security Risk Assessment Toolkit Threats, Vulnerabilities and Malware

Threats, Vulnerabilities and Malware

A listing of resources that identify external security threats and describe information identifying security weaknesses, including a section that lists resources related specifically to malware, which is a significant form of security threat in and of itself.

The best information about threats and vulnerabilities is subject to constant change as the nature of threats and vulnerabilities that represent the most current risks are constantly evolving. Threats and vulnerabilities are dynamic and change over time. This section is intended to provide information to ensure that your risk assessments accurately address the information current risks.

Additional Information


- MITRE Dictionary of Threat Sources - Appendix A and B
- Regional Threat Assessment
- A-Z Listing of Threats and Risks
- Threat Signatures
- Summer Internet Security Threat Report
- Application Threat Warning
- OSF Data Loss Detection
- Vulnerability or Data Breach
- HHS Reported Breaches
- European and National Security Alliance (ENSA) Cyber Insider Threat Task Force
- The Enemy Within: Inside Safe Insider Threat - Presentation
- Risk Major White Collar Crime and Identity Theft
- Penetration Institute Study on Insider Privacy and Data Security (InsiderPrivacy Research)
- HHS/HRSA Cyber Threat Intelligence and Incident Coordination Center (CIC)
- Assessment Lifecycle Overview

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Security Risk Analysis (simple)



Reasonably Foreseeable Internal and External Threats	Likelihood of Occurrence	Potential Business Impact	Inherent Risk Rating	Description of Current Policies, Procedures, Controls	Adequacy of Current Policies, Procedures, and Controls (S=Subsidiary, O=Organizational, D=Disruptive, I=Impairment)	Mitigation Plan	Priority	Responsibility	Timeline
cell and mobile device	7 Medium-high	12 very high	70-high	None - Sensitive information is allowed on unsecured mobile devices	Insufficiently	Encrypt all mobile devices	High	Michael Chase	Deadline 4/20/17

10 (high) - 1 (low)
Low (1)/Med (5)/High (10)

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Security Risk Analysis (simple)



Reasonably Foreseeable Internal and External Threats	Likelihood of Occurrence	Potential Business Impact	Inherent Risk Rating	Description of Current Policies, Procedures, Controls	Adequacy of Current Policies, Procedures, and Controls (S-Satisfactory, U-Unsatisfactory, O-Opportunity for Improvement)	Mitigation Plan	Priority	Responsibility	Timeline
Lost mobile device	7-Medium-high	10-very high	70-high	None - Sensitive information is allowed on unencrypted mobile devices	Unsatisfactory	Encrypt all mobile devices	High	Michael Chase	Deadline 4/20/17

10 (high) - 1 (low)
Low (1)/Med (5)/High (10)

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Security Risk Analysis (simple)



Reasonably Foreseeable Internal and External Threats	Likelihood of Occurrence	Potential Business Impact	Inherent Risk Rating	Description of Current Policies, Procedures, Controls	Adequacy of Current Policies, Procedures, and Controls (S-Satisfactory, U-Unsatisfactory, O-Opportunity for Improvement)	Mitigation Plan	Priority	Responsibility	Timeline
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Likelihood x Impact

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Security Risk Analysis (simple)



Reasonably Foreseeable Internal and External Threats	Likelihood of Occurrence	Potential Business Impact	Inherent Risk Rating	Description of Current Policies, Procedures, Controls	Adequacy of Current Policies, Procedures, and Controls (S-Satisfactory, U-Unsatisfactory, O-Opportunity for Improvement)	Mitigation Plan	Priority	Responsibility	Timeline
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Security Risk Analysis (simple)



Reasonably Foreseeable Internal and External Threats	Likelihood of Occurrence	Potential Business Impact	Inherent Risk Rating	Description of Current Policies, Procedures, Controls	Adequacy of Current Policies, Procedures, and Controls (S-Satisfactory, U-Unsatisfactory, O-Opportunity for Improvement)	Mitigation Plan	Priority	Responsibility	Timeline
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Security Risk Analysis (simple)



Reasonably Foreseeable Internal and External Threats	Likelihood of Occurrence	Potential Business Impact	Inherent Risk Rating	Description of Current Policies, Procedures, Controls	Adequacy of Current Policies, Procedures, and Controls (S-Satisfactory, U-Unsatisfactory, O-Opportunity for Improvement)	Mitigation Plan	Priority	Responsibility	Timeline
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Initial Questions

- Do we do it internally?
 - Can help build an initial security program
 - Guidelines available (including National Institute of Standards and Technology (NIST); Office for Civil Rights (OCR); etc.)
- When do we do it?
- Should we engage a vendor?

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Problems and Traps

- Attorney-Client Privilege
- Report contains conclusions of law
- How detailed (and feasible) is the risk mitigation plan?
 - Is it being followed?

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Deadly Traps

- Failure to create mitigation plan
- Failure to follow mitigation plan
 - Some delays are acceptable (with rationale)
 - Indefinite delays are not

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Questions?

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Emerging Threats: Security In the New World

Ron Woerner
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**EMERGING THREATS: SECURITY IN
THE NEW WORLD**

Ron Woerner
Twitter: @ronw123

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Identity Paradox

Who am I?

- How do you know?
- How do I prove it to you?
Without compromising my privacy?



#1 Threat = Humans

Who I am

Ron Woerner

- Information Security Professional
- Professor of Cybersecurity Studies for Bellevue University
- BBB Cybersecurity expert
- FBI Citizen's academy alumni
- 25+ years experience in IT, 17 in security
- Keynote speaker on security and Internet safety

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Agenda

- **Why?** – Problem statement
- **Who?** – Victims & Attackers
- **What?** – Protecting Your Stuff
- **How?** – Hacking techniques
- Solutions
 - Awareness
 - Simple security measures

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Breaches Continue to Rise

Why?

Breaking Down the H1 2016 Data Breach Statistics:

- 3.04 million records compromised every day
- 126,936 records compromised every hour
- 2,116 records compromised every minute
- 35 records compromised every second



A 31% increase

Source: Gemalto

<http://blog.gemalto.com/security/2016/09/20/data-breach-statistics-2016-first-half-results/>
<http://www.informationisbeautiful.net/visualizations/worlds-biggest-data-breaches-hacks/>

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Breach Costs Continue to Rise



Source: 2016 Ponemon Cost of Data Breach Study
<http://www-03.ibm.com/security/data-breach/>

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Who?

Victims



- You
- Your clients
- Everyone

Attackers



- Organized Crime
- Nation states
- Insiders
- Anyone with opportunity

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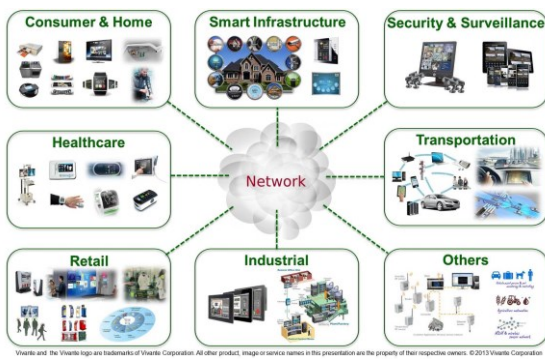
Endpoints

What?

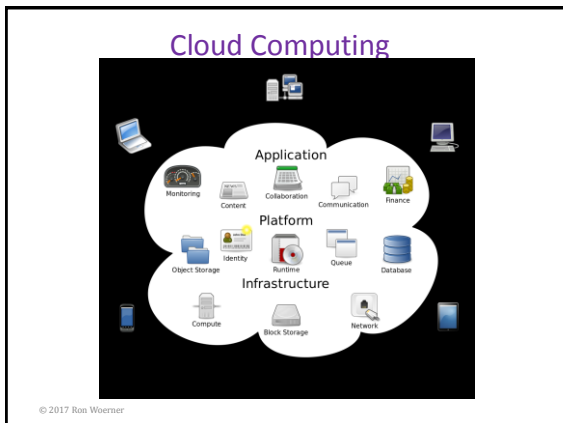


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Internet of Things (IoT)







#1 Security Issue

ransomware, ransomware(r)
noun

1. a type of malicious software designed to block access to a computer system until a sum of money is paid.
2. "although ransomware is usually aimed at individuals, it's only a matter of time before business is targeted as well"

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Data Breach – Top Causes

How?



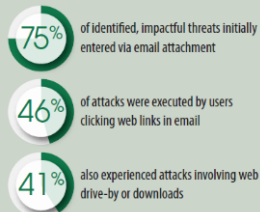
Source: 2016 BakerHostetler Data Security Incident Response Report

http://datasecr.com/61/516/11610/BakerHostetler_2016_Data_Security_Incident_Response_Report.pdf

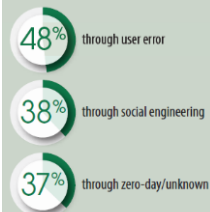
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How?

How Attackers Get Into User Endpoints



How Attackers Bypass Endpoint Defenses



Source: <https://www.sans.org/reading-room/whitepapers/firewalls/exploits-endpoint-2016-threat-landscape-survey-37157>

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Hacking Techniques Quick Demos

- Human Hacking
- Google Hacking
- Email Hacking

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The Easiest Hack



Google Hacking

The Google logo in its multi-colored font.

Google Search

I'm Feeling Lucky

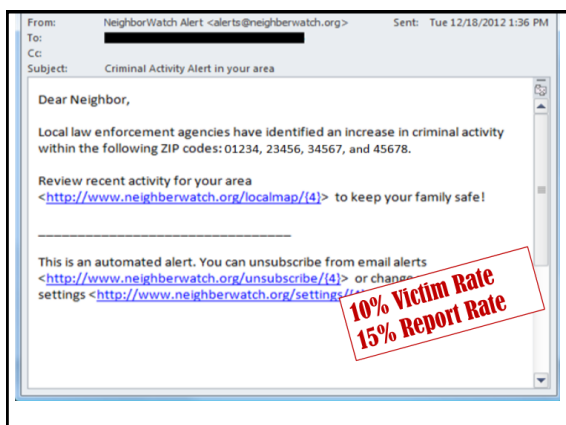
https://www.google.com/intl/en/help/features_list.html

Email Hacking

- Finding email addresses is trivial
- Inherently insecure
- Phishing, Spear Phishing, Whaling



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Problem

Most Nebraskans are Cyber Unaware

- Only basics cybersecurity principles are taught in schools
 - Little cybersecurity education for teachers
 - Only in place for ~ 5 years
- Need more consumer awareness
- Positive sources



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What does this mean?

You need to protect:

- Yourself / your stuff
- Client records
- Client access to portals storing these records
- Confidential case records
- Messages containing sensitive information



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You're still responsible

What can I do?



Simple Steps for Cyber Security

- “Trust, but verify”
 - When in doubt, ask...
- “Be Prepared”
 - It’s not if, but when...
- Protect your customers
- Keep a clean & updated machine
 - Pay a little now or a lot later
- Encrypt
- Stop-Think-Connect

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Trust, but Verify

- If it seems too good to be true...
- Trust your gut
- When in doubt, ask someone
 - #1 way to defeat social engineering
- Verify files & websites using Virus Total:
virustotal.com

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THINKING TWICE...



KEEP A CLEAN MACHINE.

Like your phone or PC, keep any machine that connects to the Internet free from viruses, malware and other online threats. Update apps that you use to control devices whenever a new version is available.



THINK TWICE ABOUT YOUR DEVICE.

Have a solid understanding of how a device works, the nature of its connection to the Internet and the kinds of information that is stored and transmitted.



YOU ARE ONLY AS STRONG AS THE NETWORK TO WHICH YOU CONNECT.

If you haven't properly secured the network you are connecting to with proper passwords, updated software and maintenance of other connected devices, your Internet of Things could be vulnerable.

[click here](#)

Protect Your Customers

Have (and follow) a privacy policy

Your company's website should have a privacy policy that tells customers what information you collect and how you use it.

Know what you have

You should be aware of all the personal information you have about your customers, where you're storing it, how you are using it, who has access to it and how you protect it.

Keep what you need and delete what you don't

While it's tempting to keep information for future use, the less you collect and store, the less opportunity there is for something to go wrong.

Protect what they give you

If you're holding onto information about your customers, you need to keep it secure.

<http://staysafeonline.org/business-safe-online/resources/protect-your-customers>

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Secure Your Access

- Multifactor authentication
- Long passwords
- Different passwords
- Passwords managers
 - KeePass
 - LastPass



<https://www.lockdownyourlogin.com/>

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Encrypting files

- AES Encrypt
 - <https://www.aesencrypt.com/>
- 7-Zip - Encrypt / Decrypt multiple files & folders
 - <http://www.7-zip.org/>
- Encrypting PDF documents
 - <https://acrobat.adobe.com/us/en/acrobat/how-to/pdf-file-password-permissions.html>
- Windows Bitlocker
 - Drive encryption
 - If you don't know what it is, ask your IT support



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<http://www.dhs.gov/stopthinkconnect>



<http://staysafeonline.org/>

Questions???



Ron Woerner
Ronald . Woerner @
bellevue.edu
Twitter: @ronw123

I HAVE NO SPECIAL
TALENTS. I AM ONLY
**PASSIONATELY
CURIOUS.**
-ALBERT EINSTEIN





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TECHNOLOGY & DATA PROTECTION FORUM

Table Top Exercise: What Would You Do?

Eli A. Rosenberg, AriAnna C. Goldstein,
Grayson J. Derrick and Krista M. Eckhoff

Table Top Exercise: WHAT WOULD YOU DO?

Grayson J. Derrick
Krista M. Eckhoff
Ari C. Goldstein
Eli A. Rosenberg

What Are The Threats?

- More than 430 million new pieces of malware in 2015 – up 36% over the prior year
- In 2015, 429 million identities were exposed, which included nine mega breaches (defined as a breach of more than 10 million records)

Source: Symantec Internet Security Threat Report, Volume 21, April 2016

What Are The Threats?

- In the last 5 years, there has been a steady increase in attacks targeting small businesses (defined as less than 250 employees)
- It's not just Fortune 500 companies at risk – 43% of all attacks in 2015 were targeted at small businesses

Source: Symantec Internet Security Threat Report, Volume 21, April 2016

Why Is This Important?

- When asked about the effects of a data breach, breached organizations stated:
 - 22% of breached organizations lost customers
 - Almost 40% of those that lost customers lost 20% or more of their customer base

Source: Cisco 2017 Annual Cybersecurity Report

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Today's Exercise

- We will introduce a data breach scenario, piece by piece, involving various characters and exciting twists and turns
- Group discussion
- Participation is needed!

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Let's Meet The Players...



- Founded in 1995
- Based in Omaha
- 75 employees
- Movement from bricks and mortar to online presence
- Hired a developer to build its new online platform

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KOALA T
Bringing your pet quality products since 1995

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Photo credits, Koala T customers: Candice Goldstein, Rachel Neuendorf, Natalie Moriarty

Let's Meet The Players...

- Large Minneapolis-based developer
- Specializes in online payment platforms
- Works for several mid-sized e-commerce retailers
- Direct link to Koala T

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Let's Meet the Players...

MORE INFORMATION COMING SOON!

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LET THE HACKING GAMES

```
struct group_info init_groups = { .usage = ATOMIC_INIT(2) };
struct group_info *groups_alloc(int gidsetsize) {
    struct group_info *group_info;
    int nblocks;
    int i;

    nblocks = (gidsetsize + NGROUPS_PER_BLOCK - 1) / NGROUPS_PER_BLOCK;
    /* Make sure we always allocate at least one indirect block pointer */
    nblocks = nblocks ? 1 : 1;
    group_info = kmalloc(sizeof(*group_info) * nblocks);
```

ACCESS GRANTED

BEGIN

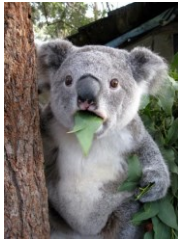
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Part I:

Koala T Learns of the Breach



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Koala T Learns of the Breach



- Roxanne Brown – Director of IT
- Familiar with Platforms-R-Us
- Roxanne has worked with Koala T to increase staff and bring policies and procedures in line with industry standards

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Koala T Learns of the Breach

- Every morning, Roxanne checks "Krabs on Security"
- "Krabs" is run by Eugene H. Krabs, a former restaurateur and reporter who now oversees a blog covering cybercrimes and data protection news
- On Thursday, Roxanne checks "Krabs" and sees the following . . .

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Koala T Learns of the Breach



KrabsOnSecurity
In-depth security news, investigation, and crustacean

Apr 17

DATA BREACH AT PLATFORMS-R-US

KrabsOnSecurity has learned that Minneapolis based web-developer Platforms-R-Us has been the subject of an apparent data breach. While KrabsOnSecurity has not been able to conclusively determine the source or extent of the breach, an anonymous tipster going by the pseudonym "Patrick Star" indicated that the breach may extend to the company's customers.

Platforms-R-Us specializes in developing online payment platforms for ecommerce websites. This is the first known incident of a data breach involving Platforms-R-Us.

KrabsOnSecurity will continue investigating this incident and will update readers on any new developments as they occur.

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to be part of our interactive poll.

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QUESTIONS FOR THE AUDIENCE

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Part II:
Investigating the Breach



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Investigating the Breach

- Platforms-R-Us breach was quite large
- Firewall logs, audit trails show Koala T's security WAS compromised
- Phishing email with embedded link
- Koala T's system likely compromised, but the source is unknown

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A Phone Call...

- A local news reporter, Cam Caleb, sees that, according to Platforms-R-Us's website, Koala T is a customer
- Cam Caleb then calls Roxanne...



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Cam Calls Roxanne



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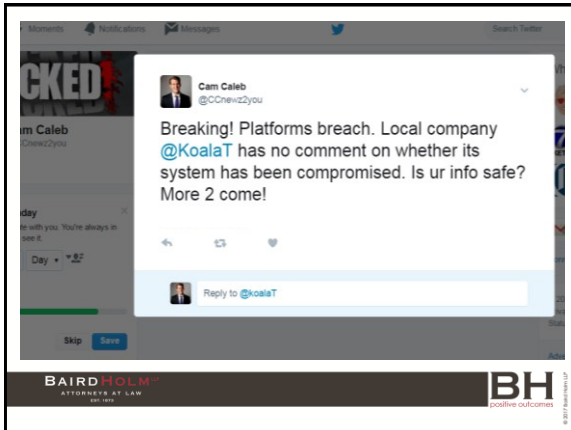
**THERE'S NO
SUCH THING AS
BAD PUBLICITY**

(Or is there?)

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Koala T Confirms the Hack

- On Friday, Koala T contacts outside counsel for the first time
- Engages a forensic analyst
- No public statement, but local news is reporting a Koala T breach based on an anonymous, inside source

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Koala T Issues A Press Release



KOALA T STATEMENT ON PLATFORMS-R-US DATA BREACH

OMAHA -- April 14, 2017 Koala T Pet Suppliers announced today that it is aware of the reported unauthorized access to the systems of Platforms-R-US. Koala T confirmed that it is a customer of Platforms-R-US and Koala T is working to determine what impact, if any, the Platforms-R-US data breach had on Koala T's own systems and whether those systems were in any way compromised.

"Koala T's first priority is preserving the trust of our customers and we are moving swiftly to address this issue, so you can shop with confidence. We regret any inconvenience this may cause," said Dan Smith, Koala T's president and chief executive officer.

Additional information will be made available via Koala T's corporate [website](#).

About KOALA T

Omaha-based Koala T Pet Suppliers is the preeminent online pet supply company for consumers, retailers and veterinary clinics. Since 1995, Koala T has given a portion of its profit to help provide assistance for homeless pets and therapy for single, unmarried cat-owners; today, that giving equals thousands of dollars a month. For more information about Koala T's commitment to corporate responsibility, visit [koalat.com/corporate-responsibility](#).

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Koala T Confirms the Hack

- Over the weekend, the analyst determines Koala T's system was hacked
- Analyst concludes that the virus was transmitted from Platforms to Koala T
- Analyst concludes that the hackers gained access to Koala T's information

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This Just In!

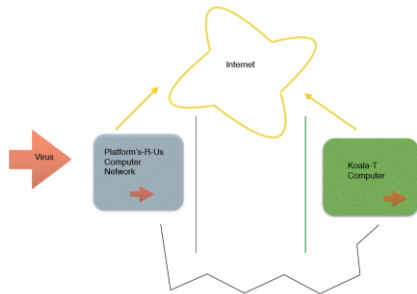


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ANATOMY OF A DATA BREACH



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Part IV:

Type of Information Compromised



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But First, Another Press Release



KOALA T STATEMENT ON PLATFORMS-R-US DATA BREACH

OMAHA -- April 18, 2017 Koala T Pet Suppliers confirmed today that approximately 500 of its customer accounts were accessed as part of the previously reported unauthorized access to the systems of Platforms-R-Us. Koala T has partnered with a third-party forensic firm to conduct a thorough investigation of the incident and its scope.

Additional information will be made available via Koala T's corporate website.

About Koala T

Omaha-based Koala T Pet Suppliers is the preeminent online pet supply company for consumers, retailers and veterinary clinics. Since 1995, Koala T has given a portion of its profit to help provide assistance for homeless pets and therapy for single, unmarried cat-owners; today, that giving equals thousands of dollars a month. For more information about Koala T's commitment to corporate responsibility, visit koalat.com/corporateresponsibility.

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Information Compromised

- Accessed information includes: names, addresses, birthdates, bank accounts
- Access to personally identifiable information ("PII") often triggers a breach notification requirement
- What is PII?

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Part V: Consequences



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Consequences of Data Breach: Litigation

- Contract provisions
- Lawsuit (or threat of lawsuit) can result from a data breach
 - Credit card processors; affected customers; shareholders
- Later presentations will provide a detailed update

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Consequences of Data Breach: Government Enforcement

- Federal government enforcement
 - FTC
 - CFPB
 - SEC
 - HHS OCR

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Consequences of Data Breach: Government Enforcement

- State government enforcement
 - 47 states have breach notification laws
 - States will work together
 - Even small businesses can be targeted

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"Platforms shall indemnify, and hold harmless Koala T, its affiliates and licensors, and each of their respective employees, officers, directors, and representatives from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any third party claim concerning (i) a breach of Platforms obligations under Section 7 (Network Security) of this Agreement; or (ii) a violation of law by Platforms."

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"Platforms shall indemnify, and hold harmless Koala T, its affiliates and licensors, and each of their respective employees, officers, directors, and representatives from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any third party claim concerning (i) a breach of Platforms obligations under Section 7 (Network Security) of this Agreement; or (ii) a violation of law by Platforms."

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"Platforms shall indemnify, and hold harmless Koala T, its affiliates and licensors, and each of their respective employees, officers, directors, and representatives from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any third party claim concerning (i) a breach of Platforms obligations under Section 7 (Network Security) of this Agreement; or (ii) a violation of law by Platforms."

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Part VI:

What Happened to Koala T?



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Part VI:

What Happened to Koala T?



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Questions?

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TECHNOLOGY & DATA PROTECTION FORUM

2017

Working Lunch and Panel Presentation

Grab a boxed lunch and join us for a panel discussion about hot topics, including an audience Q&A.

Hot Topics:

1. Cyber Litigation Update
2. Employment Law Update
3. CFB Financial Update
4. Indemnification Issues
5. EU Data Protection Update

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Hot Topics

Panel of
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2017 Data Breach Litigation Update

Jill R. Ackerman

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Consumer Case Statistics

- 83 new federal class action cases were filed between 8/14 and 12/15
- 21 unique defendants
- 75% of cases include a count of negligence
- Class Litigation by Industry
 - Medical industry (37%) – Premera and Anthem breaches
 - Consumer Reporting Agencies (18%) – Experian
 - Retail Industry (11%)
 - Social Network Industry (10%) – Dating websites

Source: Bryan Cave 2017 Data Breach Litigation Update

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Top Legal Theories for Consumers

- Negligence (37%)
- Breach of Contract (11%)
- FCRA, State Consumer Protection Acts, and Federal Privacy Act (9% each)
- Unfair Competition (5%)
- Bailments - New theory of liability based in property law alleged in 21% of cases

Litigation Update

Source: Bryan Cave 2017 Data Breach

"the delivery of personal property (PERSONAL DATA) for some particular purpose or on mere deposit, upon a contract, express or implied, that after the purpose has been fulfilled, it shall be redelivered to the person who delivered it or otherwise dealt with according to the person's directions or kept until reclaimed, as the case may be." *Nebraska Supreme Court (2013)*

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Recent Supreme Court Decision

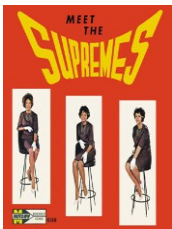


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Spokeo Inc. v. Robins, 578 U.S. ___, 136 S.Ct. 1540 (2016)



- Statutory violation of FCRA
- Court: did plaintiff allege an injury that was "concrete" as well as "particularized" (affecting the plaintiff personally)
- Cannot allege bare procedural violation divorced from any concrete harm
- Concrete defined as "de facto; that is, it must actually exist"; not necessarily synonymous with tangible

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Standing is Still not Resolved in the Federal Reported Cases



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Horizon Healthcare Breach



Horizon Blue Cross Blue Shield of New Jersey*

Making Healthcare Work®

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In re Horizon Healthcare Data Breach Litigation (3d Cir. Jan. 20, 2017)

Facts

- Breach occurred in November of 2013
- Two laptops from health insurer Horizon Healthcare
- Types of data accessed: names, DOBs, SSNs, addresses, telephone numbers, member identification numbers, financial payment information, and medical insurance claims
- District court dismissed plaintiffs' claim because they did not have standing under the Fair Credit Reporting Act (FCRA) and because of that the district court did not have supplemental jurisdiction over plaintiffs' other state claims. Plaintiffs appeal.

Discussion and Holding

- Third Circuit reversed and concluded that plaintiffs have standing due to Horizon's alleged violation of FCRA.
- The court concluded the Supreme Court's ruling in *Spokeo, Inc. v. Robins* "meant to reiterate traditional notions of standing."
- Ultimately, the court held Congress, in passing the FCRA, "established that the unauthorized dissemination of personal information by a credit reporting agency causes an injury in and of itself—whether or not the disclosure of that information increased the risk of identity or some other future harm."

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Excellus Health Breach



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Fero v. Excellus Health Plain, Inc. (W. D. NY Feb. 22, 2017)

Facts

- Breach occurred on Dec. 23, 2013
- Hackers installed malware
- As many as 10 million clients nationwide affected
- Types of data accessed: names, DoBs, SSNs, addresses, telephone numbers, member identification numbers, financial payment information, and medical insurance claims
- Forensic investigation "did not determine that any PHI was removed from Excellus's systems, and Excellus had no evidence that PHI was used inappropriately."

Discussion and Holding

- Plaintiffs alleged 10 causes of action. Defendants moved to dismiss because some of the plaintiffs did not have standing.
 - Court split plaintiffs into two groups: suffered misuse of data, and non-misuse
- Post-Clapper courts are still split on the issue of whether the potential of future injury due to the misuse of data satisfies standing threshold.
- The court concluded that non-misuse plaintiffs **did not have standing**, stating "the alleged injuries are neither concrete, nor actual and imminent because the alleged injuries rely on a chain of possibilities."

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Experian Breach



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In re Experian Data Breach Litigation (C. D. CA Dec. 29, 2016)

Facts

- Breach lasted two years: Sept. 2013 – Sept. 2015
- Experian's servers were compromised and 15 million social security numbers of people who applied for financing from T-Mobile USA were exposed.
- Defendants (Experian) moved to dismiss plaintiffs' FCRA, negligence, and other state law claims under Fed. R. Civ. Procedure 12(b)(6).

Discussion and Holding

- Court dismissed plaintiffs' FCRA claim because defendants did not "furnish" a "consumer report"; "it was stolen by a third party, not furnished to the third party."
- Court denied defendants' motion because plaintiffs sufficiently alleged facts under the independent-duty exception to the economic loss rule.
- Takeaway: Plaintiffs adopt a "see what sticks" approach to these cases.

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What's Happening in the Courts

Takeaways

- Facts of case make a substantial difference
- Statistics generally won't help
- Offering credit monitoring may hurt defense
- Plaintiffs' counsel continue to get increasingly creative to find statutes giving cause of action based on violation of statute
- Phase of case may make a difference in Court willingness/unwillingness to find standing – motion to dismiss (accept allegations as true) vs. summary judgment

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Consumers are Not the Only Plaintiffs:

- Financial Institutions
- Insureds
- Shareholders

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Arby's Breach – Credit Union Suit



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Midwest Am. Fed. Credit Union v. Arby's (N. D. GA Feb. 2, 2017)

- Breach occurred between Oct. 2016 and Jan. 2017
- Credit and debit card numbers, cardholder name, primary account numbers, expiration date, and PIN numbers exposed
- Hackers installed malware via POS system
- Class comprised of financial institutions alleging:
 - Arby's should have been aware that a data breach was an industry concern (citing Target, Sony, and Home Depot breach events)
 - Arby's breached Card Operating Regulations
 - Arby's did not upgrade to EMV compatible readers
 - Arby's policy and procedures did not comply with PCI DSS v. 3.1.
- Plaintiffs alleged the following:
 - Negligence
 - Interesting theory: FTC statute creates "duty" because it requires merchants "to take reasonable measures to protect data"
 - Negligence per se
 - Requests declaratory and injunctive relief

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Suit Against Chubb Insurance



- P.F. Chang's sued Chubb under Cyber Policy
- Court determined that policy did not cover PCI DSS assessments
- These were the MasterCard contractual fees of \$1.9 Million for reissuing cards and the management of that process

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Officers and Directors Suit



- 19 Current and Former Officers and Directors
- Breach fiduciary duty, waste of corporate assets, unjust enrichment, gross mismanagement
- Damages, corporate governance reforms, and restitution of benefits and compensation

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Officers and Directors Timeline



- Data breach 10/2015 – 6/2016
- 2/2016 – Announcement malware
- 6/2016 – Announcement of broader breach
- Sued by financial institutions to recover costs
- Sued by customers
- 12/16/2016 D&O Suit filed
 - Detailed allegations to substantiate demand on D&O's to bring lawsuit futile based on family relationships and substantial ownership

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Officers and Directors Suit



- January 24, 2017
- Based on Securities Violations not Breach of Fiduciary Duty
- Failed to encrypt data + breach foreseeable = Material Misstatements
- Alleged price decline:
 - 9/2016 Disclosure ↓ 3.06 %
 - 12/2016 Disclosure ↓ 6.11 %

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BEST DEFENSES TO D&O SUITS

- Corporate Boards and Committees
OVERSEE Data Protection
- Document Steps Taken
- Security Policies
- Security Audits
- Take serious reports and evaluations
and act
- Proper insurance protections

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Federal Contractor Privacy Training

Kelli P. Lieurance

What is a Federal Contract?

- Contract with an Executive Branch agency related to "acquisitions," "supplies," and "services:
- No monetary threshold

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What Is *Not* Considered A Federal Contract?

- Non-procurement contracts
- Grants
- Federal financial assistance (i.e., Medicare parts A and B, Medicaid reimbursement)
- Purchases/leases of real property

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Personally Identifiable Information ("PII")

- Any information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to a specific individual.

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Requirements

- Annual training to employees who:
 - Have access to a system of records;
 - Create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise handle personally identifiable information on behalf of the agency; or
 - Design, develop, maintain, or operate a system of records

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Content of Training

- The provisions of the Privacy Act of 1974 (including penalties);
- The appropriate handling and safeguarding of PII;
- The authorized and official use of a system of records or any other PII;
- The restriction on the use of unauthorized equipment to create, collect, use, process, store, maintain, disseminate, disclose, dispose, or otherwise access PII;
- The prohibition against the unauthorized use of a system of records or unauthorized disclosure, access, handling, or use of PII; and
- Procedures to be followed in the event of a suspected or confirmed breach of a system of records or unauthorized disclosure, access, handling, or use of PII.

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Other Requirements

- Must be tailored to specific positions
- Must provide basic foundational education on privacy
- Must provide advanced training
- Must involve some system to test knowledge at end of training

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What Now?

- Look for reference to training requirement in federal contracts
- Flow down requirement to subcontractors, if applicable
- Explore training options

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CFPB State of the Union

Eli A. Rosenberg

CFPB Background

- Established by Dodd-Frank
- Supervisory, Rulemaking, and Enforcement Authority
- Regulates Financial Services Industry
- Unique Structural Attributes

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The PHH Case

- Brief summary of case background
- Why was the CFPB's structure ruled unconstitutional?
- Current status? Has the Trump Administration weighed in?
- Impact on the CFPB if the ruling is upheld

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Congressional Bills Aimed at Weakening the CFPB

- Financial Choice Act
 - Limits the CFPB's enforcement capabilities
 - Replace single director with five person panel
 - Make the CFPB's budget Congressional approval/oversight
 - Remove ability to designate banks as "too big to fail" (systemically important)
 - Repeal the "Durbin Amendment"

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Indemnification

Jonathan J. Wegner

Indemnification

- Damages
 - Direct
 - Indirect/Consequential
- Special Riders
 - Privacy
 - Information Security

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Indemnification

- Drilling in on Data Breach Damages
 - Third-party claims
 - Out-of-pocket expenses
 - Legal Expenses
 - Notification Expenses
 - Call Centers
 - Credit Monitoring Services

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Limitations on Liability

- Caps / Exclusions
 - Revenues
 - Multiples of Revenues
- Excluded Damages
- Uncapped Damages
- Linkage to Insurance Coverages

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The EU General Data Protection Regulation

Why is it important to me???

Grayson J. Derrick

A New Data Protection Landscape

- It's a regulation, not just a directive
- You need to comply – even if you're not in the EU
- This is a stricter law

Internet Service Providers

They can sell what???

What Happened and What Now?

- On March 28th, the House voted to repeal rules that formerly prohibited Internet service providers from selling their customers' data without their permission
- ISPs will have the ability to collect, store, share and sell certain types of data – browsing history, app usage data, location information – all without users' consent

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Hasn't This Been Going On?

- Facebook and Google have been selling user data for years
- This is more than targeted ads
- FCC won't be able to pass privacy restrictions protection web browsing history

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How Do I Protect My Privacy?

- Use a VPN
- Other tools to mask your identity
- HTTPS sites

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TECHNOLOGY & DATA PROTECTION FORUM

Insurance Retrospective

Jonathan J. Wegner, James E. O'Connor
and Justin W. Firestone

Insurance Retrospective

Justin W. Firestone
James E. O'Connor
Jonathan J. Wegner

Agenda

- Current trends
- Application process
- Anatomy of a cyber insurance policy
- Selected provisions
- Notice of claim
- Captive insurance

Current Trends

- Growth in cyber insurance
 - 2015: 2.5 billion
 - 2020: 7.5 billion (Cyber Risk Threat and Opportunity Report)
- 2015: 63% of companies had coverage (Statista)

Current Trends

- More than ¼ of underwriters report client seek higher limits (2016 Survey of Cyber Insurance Market Trends by Advisen)
- 2016: healthcare entities driving growth (2016 Survey of Cyber Insurance Market Trends by Advisen)

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Application Process

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Application Process

- Please respond to answers clearly. Underwriters will rely on all statements made in this application. This form must be dated and signed by the CEO, CFO, President, Risk Manager or General Counsel. Completion of this submission may require input from your organization's risk management, information technology, finance, and legal departments:

Source: ACE Cyber and Privacy Insurance Application

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Application Process

Cyber and Privacy Insurance Application

- Over eight pages of detailed questions
- "Does the Applicant have a formal process in place to automatically push updates to all computing resources for critical updates, patches, and security hot-fixes?"
- When performing due diligence on new vendors, do you:
 - Make formal assessments of the security risk associated with the vendor?
 - Verify the vendor's security framework (e.g., SAS70)?
 - Require contractual indemnification for privacy or security losses?"

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Application Process

By signing this application, the applicant warrants to the company that all statements made in this application and attachments hereto about the applicant and its operations are true and complete, and that no material facts have been misstated or misrepresented in this application, suppressed or concealed. The undersigned agrees that if after the date of this application and prior to the effective date of any policy based on this application, any occurrence, event or other circumstance should render any of the information contained in this application inaccurate or incomplete, then the undersigned shall notify the company of such occurrence, event or circumstance and shall provide the company with information that would complete, update or correct such information.

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Application Process

ANY SECURITY ASSESSMENT, ALL REPRESENTATIONS MADE WITH RESPECT TO ANY SECURITY ASSESSMENT, AND ALL INFORMATION CONTAINED IN OR PROVIDED BY APPLICANT WITH RESPECT TO ANY SECURITY ASSESSMENT, REGARDLESS OF WHETHER SUCH DOCUMENTS, INFORMATION OR REPRESENTATIONS ARE ATTACHED TO THE POLICY, ARE HEREBY INCORPORATED BY REFERENCE INTO THIS APPLICATION AND MADE A PART HEREOF.

SIGNING OF THIS APPLICATION DOES NOT BIND THE APPLICANT OR THE INSURER TO COMPLETE THE INSURANCE, BUT IT IS AGREED THAT THIS APPLICATION AND ANY INFORMATION INCORPORATED BY REFERENCE HERETO, SHALL BE THE BASIS OF THE CONTRACT SHOULD A POLICY BE ISSUED, AND IS INCORPORATED INTO AND IS PART OF THE POLICY.

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Key Insuring Agreements

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Key Insuring Agreements

- First Party
 - Breach and Notification
 - Business Interruption
 - System Damage
 - Cyber Extortion
- Third Party
 - Network Liability
 - Privacy Liability
 - Regulatory Proceedings

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Key Insuring Agreements

- **First Party**
 - Breach and Notification
 - Business Interruption
 - System Damage
 - Cyber Extortion
- **Third Party**
 - Network Liability
 - Privacy Liability
 - Regulatory Proceedings

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Key Insuring Agreements

- First Party
 - **Breach and Notification** → **Forensic investigation**
Legal
Notification
Credit monitoring
Public relations
 - Business Interruption
 - System Damage
 - Cyber Extortion
- Third Party
 - Network Liability
 - Privacy Liability
 - Regulatory Proceedings

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Key Insuring Agreements

- First Party
 - Breach and Notification
 - **Business Interruption** → **Lost profits**
Extra expenses
 - System Damage
 - Cyber Extortion
- Third Party
 - Network Liability
 - Privacy Liability
 - Regulatory Proceedings

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Key Insuring Agreements

- First Party
 - Breach and Notification
 - Business Interruption
 - **System Damage** → **Rectification costs**
Damage to data
- Due to cyber peril
 - Cyber Extortion
- Third Party
 - Network Liability
 - Privacy Liability
 - Regulatory Proceedings

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Key Insuring Agreements

- First Party
 - Breach and Notification
 - Business Interruption
 - System Damage
 - **Cyber Extortion**
- Third Party
 - Network Liability
 - Privacy Liability
 - Regulatory Proceedings



Loss due to threats

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Key Insuring Agreements

- First Party
 - Breach and Notification
 - Business Interruption
 - System Damage
 - Cyber Extortion
- Third Party
 - **Network Liability**
 - **Privacy Liability**
 - Regulatory Proceedings



Legal defense
Settlements
Demands
Judgements

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Key Insuring Agreements

- First Party
 - Breach and Notification
 - Business Interruption
 - System Damage
 - Cyber Extortion
- Third Party
 - Network Liability
 - Privacy Liability
 - **Regulatory Proceedings**



Legal defense
Fines and penalties

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Gotchas

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Gotchas – Selected Provisions

- "Claims Made and Reported" vs. "Occurrence"
- Approved legal and forensic teams
- Clearly defining the scope of your Professional Services or Technology Services (for third-party liability)

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Gotchas – Selected Definitions

- "Privacy Event" (Privacy Liability or Breach Costs)
 - Unauthorized disclosure, loss, or theft of:
 - PII, PHI, other nonpublic personal information "in any format"
 - Confidential information if protected under written NDA or similar agreement
- "Network Security Wrongful Act" (Network Liability)
 - Causes a breach of network security that causes harm or loss

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Gotchas – Selected Exclusions

- Electromagnetic Fields (EMPs)
- Bodily Injury and Property Damage
- Intentional acts
- Unencrypted mobile devices
- Violations of consumer protection laws
- Failure to meet basic security practices

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Gotchas – Selected Exclusions

- War, whether declared or not
- Terrorism or cyberterrorism

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Gotchas – Selected Exclusions

- War, whether declared or not
- Terrorism or cyberterrorism
 - "alleging, based upon, arising out of or attributable to war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war is declared or not), strike, lock-out, riot, civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power."

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Gotchas – Selected Exclusions

- War, whether declared or not
- Terrorism or cyberterrorism
- Violation of law

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Gotchas – Selected Exclusions

- War, whether declared or not
- Terrorism or cyberterrorism
- Violation of law

excludes any claim "alleging, based upon, arising out of or attributable to any dishonest, fraudulent, criminal, or malicious act, error or omission, or any intentional or knowing violation of the law by an **Insured**".

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Gotchas – Selected Exclusions

- War, whether declared or not
- Terrorism or cyberterrorism
- Violation of law
- Promises beyond legal requirement

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Gotchas – Selected Exclusions

- War, whether declared or not
- Terrorism or cyberterrorism
- Violation of law
- Promises beyond legal requirement

"breach of any express, implied, actual or constructive contract, warranty, guarantee, or promise, including any actual or alleged liability assumed by the **Insured**, unless such liability would have attached to the Insured even in the absence of such contract, warranty or guarantee."

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Gotchas – Limits and Sub limits

Coverages:	Limit of Liability Each Claim and Maximum Total Policy Period Aggregate:	Self-Insured Retention:	Retroactive Date:
C. Privacy Breach Costs			Not Applicable
"Endurance Breach Assist Counsel"	\$500,000	First dollar coverage*	
"Breach Response Expenses"	\$500,000	\$500,000	
"Notification, Monitoring and Restoration Services"	\$5,000,000	\$500,000	
"Foreign Notifications"	\$250,000	\$500,000	
* First dollar coverage subject to limitations in Section III, as amended.			
Maximum Total Policy Period Aggregate Privacy Breach Costs Limit:		\$ 5,000,000	

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Example: Privacy Breach Costs

- Disclosure of 200,000 medical records
- \$600,000 in legal breach consulting
 - \$500,000 coverage (sublimit), no SIR
- \$800,000 in forensic analysis
 - \$300,000 in coverage (\$500,000 SIR)

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Example: Privacy Breach Costs

- \$2,500,000 in restoration and notification costs
 - \$2,000,000 in coverage (\$500,000 SIR)
- \$500,000 in foreign notification costs
 - No coverage (\$500,000 SIR)

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Example: Privacy Breach Costs

- Good news!
 - You still have \$2,200,000 in coverage for your aggregate policy limit
- Bad news!
 - You've been sued for \$50,000,000 in damages from a class-action lawsuit
 - And you failed to mail the foreign notices in time

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How to Handle "Gotchas"

- Discuss with your broker
- Add rider

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Notice of Claim

- **Claim** means: a written demand received by any Insured for money or services, including the service of a suit or institution of regulatory or arbitration proceedings
- **Notice of Claim:**
 - If any Claim is made against the Insured, the Insured shall forward as soon as practicable ... notice of such **Claim**
 - If, during the **Policy Period**, the **Insured** becomes aware of any circumstances that could reasonably be the basis for a **Claim** it may give written notice

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Focus on Captive Insurance

Jonathan J. Wegner

Overview

- What is a captive?
- Why form a captive?
- Sample policy provisions
- Good candidates for captives
- Legal parameters
- Bespoke vs. turnkey options

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"Insurance Insurance"



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What is a captive?

- Your own private insurance company
 - Insures risks the company already has
 - Creates reserves over time
 - Tax incentives for small captives (up to \$2.2MM in premium per year)

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What is a captive?

- A licensed insurance company
 - State-domicile only (not admitted elsewhere)
 - Insurance "regulation lite"
 - Writes real insurance policies
 - Must be underwritten
 - Actuarial standards

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Why form a captive?

- Leverage with insurers
- Lack of coverage availability
- Build reserves
- Reduced cost and stable premiums
- Control claims process
- Tax planning

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Sample Policy Provisions

- Breach caused by hacking/virus
 - Unauthorized access that causes:
 - Unauthorized publication of PII
 - Transmission of viruses to third parties
 - Loss includes
 - All amounts paid to third parties for damages
 - Audit/attorney/expert fees
 - Notifications
 - Cost to restore data

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Sample Policy Provisions

- Computer System Failure
- Deductible Reimbursement
- Difference in Conditions
 - Claim otherwise covered under third-party insurance but for policy exclusion or policy limits

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Sample Policy Provisions

- Intellectual Property Event
- Legislative or Regulatory Change
- Administrative Actions
- Privacy Liability
- Representations and Warranties
- Reputational Risk

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Sample Policy Provisions

- Bank-specific provisions
 - Core deposit intangible
 - Impaired borrower collateral
 - Regulatory audit

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Good Candidates

- EBITDA: \$2MM+
- Revenue: \$10MM+
- Insurable risks
- Lack of coverages

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Good Candidates

- Professionals
- Manufacturers
- Import/Export
- Construction and Real Estate
- Oil and Gas
- Hospitality
- Freight

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Legal Parameters

- Onshore v. Offshore
- Up to \$2.2MM in premium
- Insurance
 - Risk sharing / risk shifting
 - 51% (now 80/20 if not wholly owned)
 - 12 or more insureds

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Legal Parameters

- 831(b) Election
 - Premiums deductible to insured
 - Premiums not taxable to insurer
 - Investment income taxable to insurer
- Premium Taxes

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Legal Requirements

- Abuses
 - Sham insurance policies
 - Estate planning abuses
- Notice 2016-66
- Transaction of Interest

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Bespoke v. Turnkey

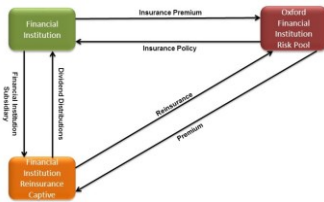


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Turnkey Structure



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