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Developments in Cyber Liability Claims: How Strong is Your Coverage Firewall?

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Over the past decade, the world has become integrated and interconnected by the developments in technology and the ability to communicate and transact business over the internet. By necessity, we are dependent on the systems and infrastructure that supports this interaction, and as a result vulnerable to loss occasioned by disruption through hacking or service outages.

Recent years have seen a rapid expansion of the world's use of social networking sites, with sites such as Facebook, Twitter and LinkedIn replacing email and texts as the new communication method for both individuals and companies. While at the same time individuals are sharing more information with the public, they are also challenging on a regular basis companies use of their personal identifying information and the tracking of their locations and computer usage.

This greater use of social networking sites and, in fact, the significant increase in recent years of the use of electronic communications for consumers' online banking and purchases and companies' financial transactions and business procurement has exposed an increasing number of users to risk of loss of their personal identifying information. Companies are faced daily with a risk of cyber attacks that may be politically, personally or commercially motivated with a breach of their customers' as the end result.

The cost to companies to recover from a cyber attack and defend against resulting class action suits can be staggering. By one report, these costs have been estimated at between US $100,000 to $1 million per attack with the largest breaches costing in excess of $100 million per attack. A second report notes that data breach costs are climbing higher with estimated costs of $214 per compromised record and an average of $7.2 million per data breach event. Regardless of the actual number, these costs can be significant and may include defense costs for class actions as well as ultimate liability that could include reissuance of credit cards, one or more years of credit report monitoring, premiums for additional insurance protection for the individual whose data was breached, reimbursement in goods or money for lost services. A data breach and the accompanying costs can be devastating to the impacted business.

With the increase in the number and severity of cyber liability claims, the number of cyber-related insurance claims is increasing, by one report as much as 56% over the past year. We are seeing a slow development of the U.S. case law in this area as insureds look to specialty cyber liability policies as well as traditional first and third party liability policies to cover these claims. Below we address in greater detail the new cyber liability claims of the past year and the recent case law in this evolving claim type.

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