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ANDERSON KILL'S
POLICYHOLDER ADVISOR
CONFERENCE WEBINAR SERIES

December 12, 2023
1:00 pm – 2:30 pm

CYBER RISK AND INSURANCE CLAIMS SURVIVAL GUIDE

Source: goalithcybersecuritygroup.com

Disclaimer

The views expressed by the participants in this program are not those of the participants' employers, their clients, or any other organization. The opinions expressed do not constitute legal advice, or risk management advice. The views discussed are for educational purposes only, and provided only for use during this session.

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SPEAKER:

Joshua Gold, Esq.
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Joshua Gold is a shareholder in Anderson Kill's New York office. He has represented numerous corporate and non-profit policyholders in various industries, with recoveries for his clients well in excess of $1.5 billion. Josh is chair of the Cyber Insurance Recovery Practice Group and co-chair of the Marine Cargo Insurance Group.

Josh's practice involves matters ranging from international arbitration, data security, directors and officers insurance, business income/property insurance, commercial crime insurance, admiralty, cargo, and marine insurance disputes. He has been lead trial counsel in multi-party bench and jury trials and has negotiated and crafted scores of settlement agreements including coverage-in-place agreements.

Josh won a multi-million dollar recovery in a landmark U.S. Court of Appeals, Sixth Circuit decision, on behalf of a retailer that suffered a data breach as a result of a computer hacking scheme. In finding coverage for the retailer's losses stemming from the breach, the Sixth Circuit rejected the insurance company's "direct loss" defense, instead applying a proximate cause standard. Because the "direct loss" defense is commonly cited in such cases, the decision is of particular importance to businesses purchasing fidelity, crime and financial institution bond coverage.

Josh is ranked by Chambers USA in Insurance Dispute Resolution: Policyholders in New York and recommend by The Legal 500 for Insurance - advice to policyholders.

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OVERVIEW OF CHALLENGES IN THE LAST YEAR

- Vendor attacks—remember Target?
- SolarWinds attack and SolarWinds regulatory suit
- SEC Cyber Rule
- CCPA
- GDPR
- Privacy Litigation
- OCR DHHS—HIPPA Violations

Source: blogomania.in

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OVERVIEW OF CHALLENGES IN THE LAST YEAR (CONT'D)

- Changes in Underwriting and Applications
- *Travelers Property Casualty Co. of America v. International Control Services, Inc.* (Illinois federal court 2022). Claimed material misrepresentation on the application for the policy along with MFA Attestation.
- Policyholder did not contest entry of judgment to rescind.
- Are applications answered correctly (and wisely)?
- Rescission almost always invoked at point of claim, interestingly.

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A New Front in Cyber: SUBLIMITS!

- Crime and Cyber Sub-Limits and Illusory Coverage
- Attempts to gut Computer Fraud Coverage
- Attempts to gut Funds Transfer Fraud Coverage
- Attempts to gut cyber coverage now?

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SUBLIMITS (CONT'D)

Recent Tennessee federal case scrutinizing crime insurance companies selling crime coverage for large blanket limits and then arguing most claims excluded / limited.

> "Conversely, CIM argues that Exclusion R conflicts with coverage provisions in the crime section of the Policy and if Oxford's interpretation is correct, the terms of Exclusion R render meaningless certain coverage terms in the crime provision. Specifically, as the Court understands CIM's proposed interpretation, the exclusion of coverage found in Exclusion R based on "voluntary parting" – which CIM concedes occurred in the Complaint – would render meaningless coverage in the crime provision for "electronic funds transfer fraud" because, by definition, fraud involves a "perversion of truth in order to induce another to part with something of value or to surrender a legal right." (Doc. No. 25 at 20 (quoting Merriam Webster)). Put another way, fraud necessarily involves a voluntary parting of property and the crime provision provides coverage for actions by a "third party" that involves "takings accomplished by… electronic funds transfer fraud.""

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RANSOMWARE SHIFTS

- Law enforcement notification a must
- Can you still pay ransom?
- SDN List and Treasury Dept. Scrutiny
- Ins. co. attempts to impose licensing for payments

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BUSINESS INTERRUPTION CLAIMS

- Claim negotiations and forensics
- A slower process
- Will less ransoms mean more BI claims???
- Are deductibles and waiting periods reasonable?

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CYBER INCIDENTS WITHOUT COMPUTER HACKERS

- Aggregating data, storing data, incorrect data
- Losing and exposing data with no hacker
- Theft of money without hacking

Source: YouTube

Source: excomsoftware.com

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MODERATOR:

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Luma S. Al-Shibib is a shareholder in the New York office of Anderson Kill and co-chair of the firm's Cyber Insurance Recovery Practice Group. She focuses her practice on insurance recovery for corporate policyholders, with an emphasis on cyber liability insurance, crime insurance, directors & officers liability insurance, and other claims-made professional liability insurance.

Luma has secured millions of dollars in recoveries for corporate clients in both litigation and pre-litigation matters. She has obtained recoveries for losses from data breaches, ransomware and phishing attacks under all-risk and fidelity crime policies as well as cyber policies.

Luma also has a background in bankruptcy and has represented clients in bankruptcy cases involving insurance claims, particularly in the context of claims under directors and officers liability insurance policies.

Luma is Co-Chair of Anderson Kill's Diversity Committee and involved in Anderson Kill's Women's Network and COVID Task Group.

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SPEAKER:

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Dennis J. Nolan, a shareholder in Anderson Kill's New York office, concentrates his practice in commercial litigation with an emphasis on insurance recovery. He also has extensive experience litigating complex chapter 11 reorganizations. He co-chairs the firm's Bankruptcy group, as well as the Marine Cargo Industry group and the Restaurant, Retail and Hospitality Industry group.

Dennis advises policyholders with respect to a broad range of insurance policies, including Marine Cargo, Cyber, Directors and Officers, Errors and Omissions, Employment Practices Liability, Marine Cargo, and Commercial General Liability policies. His clients in insurance recovery cases include companies in the financial services, technology, manufacturing, fitness, and commodity trading industries. He also has extensive experience representing debtors, creditors' committees, and unsecured creditors in complex chapter 11 cases.

Dennis has represented clients including a major financial services institution in an Errors and Omissions and Directors' & Officers' insurance dispute in connection with a bankrupt subsidiary; a leading technology company in London arbitration of an insurance coverage dispute hinging on policy periods; and "feeder fund" defendants in the Madoff bankruptcy.

He has also handled diverse matters in commercial litigation, including employment and partnership disputes, copyright infringement, fraud and breach of fiduciary duty claims against officers and directors, and antitrust. In the wake of Superstorm Sandy, Dennis provided pro bono counsel to homeowners who suffered property damage in the storm. In prior years, he also had significant responsibility for claims filed with the September 11th Victims' Compensation Fund.

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SPEAKER:

Sean Connelly
SVP & GNY Team Leader
Aon Cyber Solutions
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Sean is a Senior Vice President for Aon's Cyber Solutions E&O/Cyber Broking team in the East Region and leads the broking team in New York City. Sean is responsible for consulting with clients on their Cyber, Professional Liability, Technology, and Media risks by identifying exposures, managing insurance market relationships, strategizing, and creating tailored risk transfer solutions, as well as executing on policy terms, conditions, and servicing. Sean has over 16 years of broking experience and has represented clients across a wide range of industries.

Prior to joining Aon's Cyber Solutions broking team in August 2022, Sean led a team of brokers in New York City within Aon's Financial Services Group where he oversaw the placement of Directors & Officers Liability, Fiduciary Liability, Employment Practices Liability, Crime and Kidnap & Ransom Insurance. He also sat on the National D&O Practice Committee for FSG. Sean has previously gained work experience in the international insurance marketplace, having spent time with both Aon Risk Solutions in London, England and Aon Insurance Managers in Dublin, Ireland.

Sean was named a Power Broker by Risk & Insurance in 2021 and received a Power Broker Rising Star designation in the same year.

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SPEAKER:

Stephen Bedosky, CPCU & RPLU
Vice President
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Steve is a Vice President and leads the Professional and Management Liability Practice at York International, having joined the Company in 2006.

Under Steve's guidance, York has developed specialties addressing risk issues for law firms, staffing agencies, accounting firms, professional service and investment management funds. Steve's client roster ranges from entrepreneurial start-up to large private, public and non-profit organizations. Steve coordinates the coverage assessment, structure and placement of insurance and is deeply involved in his client's claims.

Steve firmly believes that every client is unique, and deserves a policy customized to their services and concerns. Regardless of whether a client needs coverage tailored to fit a new client contract, is exploring expanding into a new territory, or is assessing their personal risk tolerance, Steve stands ready to assist companies in protecting their balance sheet.

Steve graduated with a BA in history and religious studies from Denison University. Since joining York, Steve has earned his CPCU and RPLU designations, which are seen as the highest designations an insurance professional can achieve in commercial and professional insurance.

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POLICY APPLICATION

- Experiences
- Changes
- Issues
- Advice about Applications

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CLAIMS

- Types of Cyber Claims in 2023
- Are Claims Being Paid/Resolved?
- Main Cyber Coverage Issues
- Ransomware – To pay or not to pay?
- Types of Policies Covering Cyber Claims (Stand-Alone Cyber, Crime, GL, D&O, E&O)

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POLICIES AND MARKET TRENDS

- Developments in Cyber Policies
- Market Trends
- New Endorsements or Exclusions?
- Sublimits
- Cyber War Exclusion

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CHANGES IN THE LAW

- Increasing regulatory scrutiny over cybersecurity controls (SEC, NYDFS rules)
- Are new regulations impacting coverage?

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EMERGING RISKS

- AI
- Any others?

Source: techcircle.in

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OBSERVATIONS AND RECOMMENDATIONS

- What are some practices that a policyholder should avoid doing in the claim recovery process?
- Best practices to maximize recovery for cyber-related loss

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QUESTIONS?

Source: ImagineIT.com

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THANK YOU.

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