

Minimum Security

Don't count on CGL to cover cyber claims

By Catherine Lyle

Unless your clients only accept cash and do not receive anyone's personal information, they need cyber insurance. Do not fall prey to the thought that a traditional CGL policy will cover a cyber event.



When asked to find coverage for “cyber claims” under both the “property” and “personal injury” provisions of CGL policies, the courts have provided mixed results.

In a decision handed down just last year in Recall Total Information Management, Inc., et al. v. Federal Insurance Co, the Connecticut Court of Appeals considered the loss of computer tapes containing employment data for 500,000 IBM employees. Upon discovering that the tapes fell out of a van on a highway exit ramp, IBM was forced to spend more than \$6 million taking steps to notify and protect the affected employees pursuant to a state notification statute. The transit company ultimately forced to pay that bill in turn sought coverage from its CGL carrier for the loss on the premise that the IBM employees had sustained “personal injuries.”

The trial court ruled for the carrier on the grounds that there was no “publication.” The Court of Appeals agreed, concluding that, “Regardless of the precise definition of publication, we believe that access is a necessary prerequisite to the communication or disclosure of personal information. In this regard, the plaintiffs have failed to provide a factual basis that the information on the tapes was ever accessed by anyone.”

No case better highlights the dangers of relying upon your CGL policy for coverage than Zurich American Insurance Co. v. Sony Corp. of America et al., which arose from a 2011 cyber attack that stole consumers' personal information. Ruling in favor of Zurich, which had denied any duty to defend or indemnify, the Court based its decision on “who performed the publication,” because the CGL policy “calls for the policy holder to perpetrate or commit the act.” Because third-party hackers had committed the “publication,” not Sony, the Court concluded there was no coverage under the CGL policy. That decision is now up for appeal.

ISO has since stepped forward to clarify the purpose of the CGL policy and provide exclusions for data breach and cyberattacks: CG 2106 5/14, CG 2107 5/14 and CG 2108 5/14.

Catherine Lyle, J.D., is a vice president, claims expert with Swiss Re Corporation Solutions and teleworks from the Overland Park, Kansas office.

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