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Hackers and pirates: Insuring for cyber risk

By Matt Mason

Hackers are modern day pirates. Everyone fears them, they steal without discretion and they operate in a largely unregulated space. During the 1600s, private companies dreaded the news that a vessel was hijacked or a shipment lost. To protect against such losses, ship owners, merchants and others began meeting at Edward Lloyd's coffee house in London. There parties decided to insure maritime cargo and Lloyd's of London was born. But it wasn't until 1906 that the Marine Insurance Act was codified.

Just as the threat of pirates gave rise to maritime insurance, the threat of hackers gave rise to cyber insurance. Today, businesses across the country insure online transactions and data through cyber insurance policies. Price Waterhouse Cooper estimates that the market will reach \$7.5 billion annually by 2020.

The size of the market and perceived risk make a recent Arizona federal court case all the more chilling. In 2014, hackers stole customer credit card information from P.F. Chang's China Bistro. The theft resulted in damages to customers, costing millions of dollars to remedy.

P.F. Chang's previously purchased a cyber insurance policy. The insurer advertised that its policy offered broad coverage. The insurer covered some claims related to breach notifications and a class action lawsuit. Yet, despite the advertisement, the insurer disputed its obligation to pay a \$1.9 million assessment from P.F. Chang's credit card processor arising from fraudulent charges.

On May 31, 2016, the court agreed with the insurer. It found that the insurer was



“Protect yourself from pirates, hackers and your insurer by knowing exactly what your policy covers.”



not required to pay for damages arising from the credit card processor assessment because it was a contractual risk excluded by the policy. The ruling muddled the cyber insurer's duty to the retailer.

As with any new industry, it will take the law some time to establish guidance on interpreting cyber insurance policies. There are a wide variety of cyber insurance policies, and for that reason retailers should be cautious. Carefully review the policy and look to see if card-processing assessments are covered.

Just as it took the law hundreds of years to standardize marine insurance, it may take many years for the law to standardize the cyber insurance market. Protect yourself from pirates, hackers and your insurer by knowing exactly what your policy covers.

— An associate at Gallagher & Kennedy, Matt Mason is a transactional attorney with an emphasis in nonprofit, real estate and corporate representation. In addition to transactional guidance, Matt provides general counsel to clients ranging from real estate investment companies to charter schools and churches.

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