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Spooing Losses Not Covered – Captives

Are Better For Cyber Insurance

By William York, VP of Marketing

BUSINESS INSURANCE recently reported that Traveler's Insurance was not required to pay for losses due to Spoofing (a form of cyber-attack). According to a lower court and a federal appeals court, Traveler's computer fraud policy had an exclusion that saved the insurer from paying over \$700,000 for a cyber loss by a Seattle based Seafood Company.

The issue here is not whether or not the courts were correct in denying the insureds cyber claim. Instead, the issue is why commercial insurance is often a poor choice for cyber risk, and a captive insurance approach can provide a far more robust solution. Commercial cyber / computer fraud policies are typically layered with exclusions, rendering them worthless in many cases.

What is Spoofing?

In writing about the cyber loss, BUSINESS INSURANCE Described Spoofing:

[The Insured's] computer system was hacked in the summer of 2013, according to court papers. The hacker apparently monitored email exchanges between an [insured's] employee and a [vendor's] employee before beginning to intercept the email exchanges and sending fraudulent emails using spoofed email domains that appeared similar to the employees' actual email, for instance by substituting the number 1 for the lower-case i.

The hacker directed the [insured's] employee in these emails to change the bank account information for [the vendor] for future wire transfers, and the [insured's] employee complied, resulting in the company being defrauded of \$713,890.

Cyber risk is rapidly evolving, and businesses must be

vigilant about protecting their systems, data and employees. This emerging threat also requires meaningful employee training. Consider the list of emerging and evolving threats below:

- Hacking
- Spamming
- Phishing
- Data theft
- Data loss
- Malware
- Ransomware
- Spyware
- Spoofing
- And the list goes on...

Is this a good time to have insurance that is riddled with policy exclusions?

In addition to vigilance and employee training, small and mid-market businesses need cyber insurance that really works for them and is there when they need it. The customizable nature of captive insurance and the ability to reduce or severely limit exclusions makes it a superior approach for many companies.

Cyber (Internet) Liability Insurance

This policy will provide reimbursement for loss, damages, costs and expense for claims associated with liability due to internet activities by the insured that are excluded by a standard commercial general liability policy (and/or are not covered cyber related enumerated offenses under AI/PI coverage in a CGL policy).

Computer Operations and Data Insurance

This covers losses (i.e., expenses incurred and lost income) resulting from attacks, breakdowns, malfunctions and security breaches of the Insured's computers, computer programs and servers (and related peripheral equipment) including, but not limited to, the cost to replace or restore data and computer programs, the cost of data entry, the cost of reprogramming and

computer consultation services, public relations expenses incurred to protect or restore your reputation, monetary payments, fees, fines and penalties imposed against the Insured by credit card associations and expenses related to extortion threats that caused an interruption of the Insured's operations.

Per Occurrence/Annual Aggregate Limits:

\$1,000,000/\$1,000,000

Per Occurrence/Annual Aggregate Deductibles: \$0/\$0

Premium: \$38,398

“Breach/Release of Data” Event which means the unauthorized access to Insured's computer system arising out of actual or alleged neglect, breach of duty or omissions by Insured, which causes:

A. The unauthorized publication by a non-insured of an Insured's client's personal information which was held within Insured's computer system; or

B. Insured's computer system to transmit, by e-mail or other means, a virus to a third party.

Actual Net Loss associated with a Breach/Release of Data event shall include **Claims Expenses, Claims Losses** and any **Covered Expenses** associated with restoring or reconstructing lost electronic data or computer programs or with notifying clients of any authorized publication of their personal information.

“Breach/Release of Data related to Hacking and/or Virus Exposure” event, which means:

The unauthorized access to Insured's computer system arising out of a virus, malicious instruction, hacking, malware, phishing, or pretexting, which causes:

- i. The unauthorized publication of an Insured's client's personal information which was held within Insured's computer system; or
- ii. Insured's computer system to transmit, by e-mail or other means, a virus to a third party; or

Loss to insured of electronic data or computer programs stored within Insured's computer system resulting directly from a virus, malicious instruction or denial of service attack, including reasonable expenses

incurred in restoring or reconstructing such lost electronic data or computer program.

“Computer System Failure” event, which means the breakdown of Insured's computer system or the failure of software used by Insured in its business, including losses resulting from a virus, malicious instruction or denial of service attack. **Actual Net Loss** in connection with a Computer system Failure event shall include **Covered Expenses** such as rental or replacement equipment expenses, expenses incurred in making systems and records compatible with new equipment, data recovery expenses and consultants' fees related to the foregoing, **Income Loss**, and **Extra Expenses**.

What Is The Independent Captive Associates Service Difference?

The primary reason for forming a captive is ALWAYS risk management. All risk management is Financial. A financially strong captive is a more powerful risk management tool.

Independent Captive Associates structures captives to optimize both risk management and asset accumulation. The greater the asset accumulation, the more effective the captive is for its insureds and owners. We do this through the following:

- Comprehensive Business Risk Assessment
- Compliance with IRS Safe Harbors
- Strategic Risk Management Plan
- Superior Structuring within a Captive
- Superior Asset Management Strategies
- Superior Exit Strategies

Please call me or e-mail me to discuss any questions you may have about risk management and captive insurance companies.

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