

The logo for K&L GATES, featuring the text "K&L GATES" in white, uppercase letters on an orange rectangular background. This logo is positioned in the upper left corner of the slide, partially overlapping a blue bokeh background that covers the top half of the slide.

K&L GATES

INSURANCE COVERAGE FOR CYBER RISKS AND REALITIES

Presenters:
Roberta D. Anderson
John P. Scordo

September 24, 2013

Presentation to the Association of Corporate Counsel — Western Pennsylvania Chapter

Introductions



Roberta D. Anderson
*Insurance Coverage
Partner*



John P. Scordo
*Insurance Coverage
Partner*

The image features a blue bokeh background with a central orange horizontal bar. The bokeh consists of numerous out-of-focus light spots in various shades of blue and white, creating a textured, shimmering effect. The orange bar is a solid, vibrant color that provides a high-contrast background for the white text.

I. Why Consider Coverage for Cyber Risks?

Why Consider Coverage For Cyber Risks?

1. Every Company Has Cyber Risks—Attacks Are on the Rise With Unprecedented Frequency, Sophistication & Scale
2. As the Incidence of Attacks Escalates, the Costs of Attacks Are Also Increasing
3. Information Technology Alone Cannot Fully Address Cyber Risks
4. Insurance Can Play a Vital Role in a Company's Overall Plan to Mitigate Cyber Risks

The Frequency of Cyber Risk

56% of surveyed large companies, or approximately 300, had a material security or data breach during the past 24 months.

*Ponemon Institute,
White Paper on
Cyber Ins. – Aug. 2013*

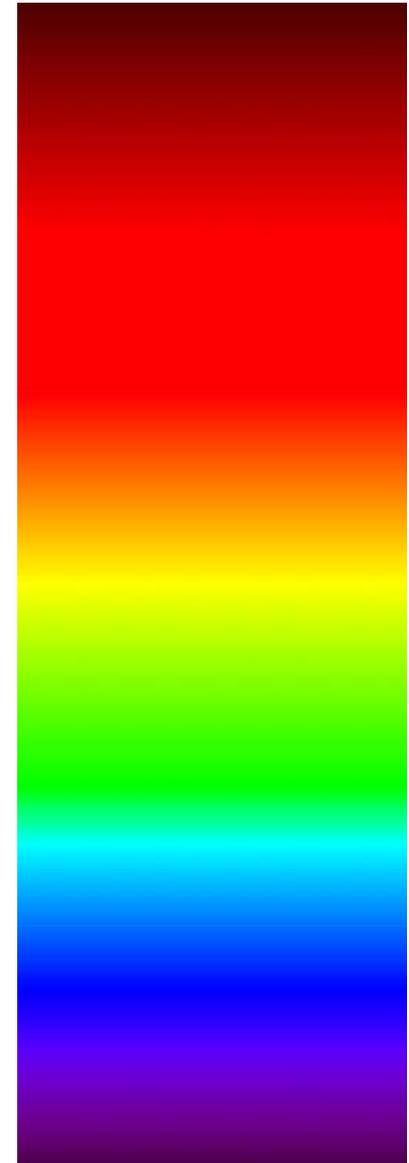
The Cost of Cyber Risk

Ponemon Institute's *2013 Cost of Data Breach Study* – average organizational cost of a data breach was \$188 for each lost or stolen record, or \$5.4 million (median) per breach.

Post-breach notification costs - \$565,020.

Types of Cyber Risks

- Advanced Persistent Threats (“APT”)
- Data Breach and Malware
- Denial of Service attacks (“DDoS”)
- Domain name hijacking
- Corporate impersonation and Phishing
- Employee mobility and disgruntled employees
- Lost or stolen laptops and mobile devices
- Inadequate security and systems: first party and third-party vendors



The Practical Risks of Cyber Attacks

- Loss of customer funds and reimbursement of charges
- Loss of “crown jewels,” IP and trade secrets
- Compromise of customer information, credit cards and other PII
- Business interruption and supply chain disruption
- Brand tarnishment
- Loss of web presence and online business
- Interception of email and data communications
- Collateral damage
- Legal and regulatory complications

Costs Associated with Cyber Attacks

1. Notification Costs / Legal Requirements
2. Credit Monitoring
3. Litigation (Breach of Privacy, Misappropriation)
4. Regulatory Investigations, Fines & Penalties

Notification Costs

In addition to federal laws, all states but four (Alabama, Kentucky, New Mexico, and South Dakota) require breach notifications.

Most states have some materiality threshold and most require that data have been “accessed” and/or “acquired.”

Data Breach Litigation

Consumer Class Actions – Standing,
Lack of Compensable Injury,
Predominance of Individualized Issues

Commercial Litigation – Contractual Remedies in
Addition to Negligence Claims Recognized

In re Heartland Payment Systems, Inc.,

5th Cir. (Sept. 2013)

SEC Disclosure of Cyber Security Risks

- SEC Division of Corporation Finance issued guidance on cyber security disclosures
- The guidance in essence states that appropriate disclosures may include four things
 - material cyber security risks—both internal risks and risks from outsourced functions
 - cyber incidents, which individually or in the aggregate pose material risk or cost
 - risks of material cyber incidents that may remain undetected for an extended period
 - a “[d]escription of relevant insurance coverage” for cyber risks

The background of the slide is a vibrant blue with a bokeh effect, featuring numerous out-of-focus light spots in various shades of blue and white, creating a shimmering, textured appearance.

II. Insurance Coverage for Cyber Risks

- Potential coverage under “traditional” third-party CGL policies
 - Potential coverage for claims alleging damage to, or loss of use of, third-party data, computers or computer systems
 - Potential coverage for data breach and other claims alleging violation of a right to privacy
 - Potential coverage for misappropriation and infringement claims

- Coverage A

"Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property.*** All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured.*** All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

- Is data is “tangible property” that can suffer “physical injury”?
 - Some courts have found coverage
 - *Retail Systems, Inc. v. CNA Ins. Co.* 469 N.W.2d 735, 737 (Minn. Ct. App. 1991) (“data on the tape was of permanent value and was integrated completely with the physical property of the tape ... **the computer tape and data are tangible property**”)
 - *Computer Corner, Inc. v. Fireman's Fund Ins. Co.*, No. CV97-10380, slip op. at 3-4 (2d Dist. Ct. N.M. May 24, 2000) (“**computer data is tangible property**”)
 - Some courts have rejected coverage
 - *America Online Inc. v. St. Paul Mercury Ins. Co.*, 207 F. Supp. 2d 459, 467, 468-69 (E.D. Va. 2002) (“the Policy does not cover damage to computer data, software and systems because such items are **not tangible property**”)
 - *State Auto Prop. & Cas. Ins. Co. v. Midwest Computers & More*, 147 F.Supp.2d 1113, 1116 (W.D. Okla. 2001) (“Alone, computer data cannot be touched, held, or sensed by the human mind; it has no physical substance. It is **not tangible property**”)

- Potential additional hurdles to coverage
 - “Property damage” definition (ISO 2001 and later forms)
 - “Electronic Data” exclusion (ISO 2004 and later forms)
- Focus on whether there are allegations of hardware or other equipment being physically changed or inoperative.
 - *Eyeblaster, Inc. v. Federal Ins. Co.*, 613 F.3d 797 (8th Cir. 2010)
 - The underlying suit alleged injury to the plaintiff’s “computer, software, and data after he visited [the insured’s] website.” The definition of “tangible property” excluded “any software, data or other information that is in electronic form”
 - The court held that the insurer was obligated to defend the insured because the complaint alleged “loss of use of tangible property that is not physically injured” under the second prong of the “property damage” definition

- Potential avenues to coverage
 - Coverage may be added through endorsement
 - ISO “Electronic Data Liability Endorsement” adds “electronic data” back to the definition of “property damage”
 - Coverage may have been purchased through the ISO “Electronic Data Liability Coverage Form”
 - Even recently issued policies may not contain such exceptions or exclusions
 - *Zurich American Ins. Co., et al. vs. Sony Corp. of America, et al.*, No. 651982/2011 (N.Y. Sup. Ct. New York Cty.)

- Coverage B

"Personal and advertising injury" means injury including consequential "bodily injury", arising out of one or more of the following offenses:

- e. ***Oral or written publication, in any manner, of material that violates a person's right of privacy.***

Has there been a “publication” that violates a “right of privacy”?

- Some courts have found coverage
 - *Park Univ. Enters., Inc. v. American Cas. Co. Of Reading, PA*, 442 F.3d 1239, 1250 (10th Cir. 2006) (Kansas law) (“the [district] court correctly determined that in layman's terms, ‘[t]he plain and ordinary meaning of privacy includes the right to be left alone.’ ... **We likewise agree with the district court's broad construction of the term “publication” in favor of [the insured]**”)
 - *Zurich American Ins. Co. v. Fieldstone Mortgage Co.*, 2007 WL 3268460, at *5 (D.Md. 2007) (Maryland law) (“Of the circuits to examine ‘publication’ in the context of an ‘advertising injury’ provision, **the majority have found that the publication need not be to a third party.**”)
- Some courts have rejected coverage
 - *Resource Bankshares Corp. v. St. Paul Mercury Ins. Co.*, 407 F.3d 631, 642 (4th Cir. 2005) (Virginia law) (“[T]he TCPA's unsolicited fax prohibition protects ‘seclusion’ privacy, for which content is irrelevant. **Unfortunately for [the insured, it did not buy insurance policies for seclusion damages;** instead, it insured against, among other things, damages arising from violations of content-based privacy.”)
 - *Recall Total Info. Mgmt., Inc. v. Federal Ins. Co.*, 2012 WL 469988, at *6 (Conn. Super. Ct. Jan. 17, 2012) (no coverage for loss of employee information because “there [wa]s **no evidence of communication to a third party**”)

- Potential hurdles to coverage
 - Exclusions relating to internet activities and breach of privacy-related laws
 - “Insureds In Media And Internet Type Businesses”
 - “Electronic Chatrooms Or Bulletin Boards”
 - “Recording And Distribution Of Material Or Information In Violation Of Law” (TCPA, CAN-SPAM, FCRA)

■ Coverage B

Potential coverage for misappropriation and infringement claims

- Has there been an “advertisement”? May turn on the relevant definition

- *Oglio Entm't Group, Inc. v. Hartford Cas. Ins. Co.*,
132 Cal.Rptr.3d 754, 763 (Cal. Ct.App. 2011)

(“There is no description of any advertisement used by [the insured] ... This is especially clear, given that the policy defines advertisement as the widespread dissemination of information or images with the purpose of selling a product[.]”)
(1998 and prior language)

- *Sentex Systems, Inc. v. Hartford Acc. & Indem. Co.*,
93 F.3d 578 (9th Cir. 1998)

(“Hartford's principal contention is that the district court erred ... because ‘advertising injury,’ defined in part in the policy as arising out of the ‘misappropriation of advertising ideas,’” includes only alleged wrongdoing that involves the text, words, or form of an advertisement. This policy's language ... does not limit itself to the misappropriation of an actual advertising text. It is concerned with ‘ideas,’ a broader term.”)

- Potential hurdles to coverage
 - Same “Coverage B” exclusions discussed in the previous section
 - Additional exclusions
 - “Knowing Violation Of Rights Of Another”
 - “Unauthorized Use Of Another's Name Or Product”

- First-party property policies
 - Potential coverage for first-party loss of data, computers or computer systems
 - Potential coverage for “time element” losses
 - Business interruption
 - Extra expense

- Potential coverage for loss of data, computers or computer systems
 - The 2007 standard-form ISO commercial property policy covers “direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.”
 - Such policies may be in the form of broadly worded “all risk,” “difference in conditions,” “multiperil” or “inland marine” policies.

- Potential coverage for “time element” losses
 - ISO’s “Business Income (and Extra Expense) Coverage Form” covers the loss of net profit and operating expenses that the insured “sustain[s] due to the necessary ‘suspension’ of [the insured’s] ‘operations’ during the ‘period of restoration.’”
 - “Extra Expense” coverage generally covers the insured for certain extra expenses incurred to minimize or avoid business interruption and to resume normal operations.
 - ISO’s form covers “Extra Expense” to “[a]void or minimize the ‘suspension’ of business and to continue operations at the described premises or at replacement premises or temporary locations....”

Is there “direct physical loss of or damage”?

- See cases above
- A couple other examples
 - *NMS Services Inc. v. Hartford*, 62 Fed.Appx. 511, 514(4th Cir. 2003) (upholding coverage for business interruption and extra expense, finding “no question that [the insured] suffered damage to its property.”)
 - *Lambrecht & Associates, Inc. v. State Farm Lloyds*, 119 S.W.3d 16, 23, 25 (Tex. App. Ct. 2003) (finding that “the personal property losses alleged by Lambrecht were ‘physical’ as a matter of law” and holding that “the business income [the insured] lost as a result of the virus [wa]s covered under the policy.”)

- Potential limitations to coverage
 - Some standard forms seek to shift data loss from the principal coverage grant by excluding electronic data from the definition of “Covered Property” and instead providing coverage under “additional coverage” that may be subject to relatively low—presumptively inadequate—coverage sublimits
 - 2007 ISO Commercial Property Form excepts “electronic data” from the definition of “Covered Property” and provides coverage under an “Additional Coverage” that is limited to “\$2,500 for all loss or damage sustained in any one policy year....”
 - 2007 ISO standard-form Business Income (and Extra Expense) Coverage Form excludes coverage for electronic data under the main coverage part and provides coverage under an “Additional Coverage” subject to a \$2,500 limit for “all loss sustained and expense incurred in any one policy year....”

- Directors' and Officers' (D&O)
 - Individuals are covered
 - Entity coverage is limited to “securities claims”
 - Follow-on litigation – shareholder suits

- Errors and Omissions (E&O)/Professional Liability
 - Must be a nexus between the loss and the rendering of “professional services”
 - Technology E&O – will respond, but this may not include breach notification costs, which is viewed as more of a “first-party” loss

- Employment Practices Liability (EPL)
 - Some policies include “employee-related” breach of privacy

- Fiduciary Liability
 - Covers individual's liability for administering and implementing employee benefit plans
 - Covers Health Insurance Portability & Accountability Act (HIPAA) civil money penalties
 - But avoid Health Information Technology for Economic and Clinical Health Act (HITECH) exclusion

- Crime/Employee Theft
 - Typically covers only loss of money or securities in tangible form
 - Computer fraud (or funds transfer fraud) coverage may be added
 - *Retail Ventures, Inc. v. National Union Fire Ins. of Pittsburgh, Pa.*, 691 F.3d 821(6th Cir. 2012) (DSW Shoe Warehouse; loss included costs for public relations, defense and responding to customer complaints)

The background of the slide is a deep blue color with a bokeh effect, featuring numerous out-of-focus light spots in various shades of blue and white, creating a textured, shimmering appearance.

III. “Traditional” Policies Will Leave Some Risks Uncovered

“Traditional” Policies Will Leave Some Risks Uncovered

- Overview
- Recent Exclusions

Recent Exclusions (April 2013)

q. Recording And Distribution Of Material Or Information In Violation Of Law

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or
- (4) ~~Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.~~

Recent Exclusions (April 2013)

p. Recording And Distribution Of Material Or Information In Violation Of Law

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or
- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

Recent Exclusions (April 2013)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF PERSONAL AND ADVERTISING INJURY DEFINITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

With respect to **Coverage B Personal And Advertising Injury Liability**, Paragraph **14.e.** of the **Definitions** section does not apply.

14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
- e. Oral or written publication, in any manner, of material that violates a person's right of privacy;

Recent Exclusions (May 2014)

This insurance does not apply to:

p. Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability

Damages arising out of:

- (1) Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- (2) The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraph (1) or (2) above.

~~However, unless Paragraph (1) above applies, this exclusion does not apply to damages because of "bodily injury"~~

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

ISO states that "when this endorsement is attached, it will result in a reduction of coverage due to the deletion of an exception with respect to damages because of bodily injury arising out of loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data."

Recent Exclusions (May 2014)

This insurance does not apply to:

Access Or Disclosure Of Confidential Or Personal Information

"Personal and advertising injury" arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal information.

The slide features a blue bokeh background with a central orange horizontal bar. The text is white and centered within the orange bar.

IV. Specialty “Cyber” Insurance Products

Specialty “Cyber” Insurance Products

- Come under names like “Privacy and Security,” “Network Security,” and names that incorporate “Cyber,” “Privacy,” “Media” or some form of “Technology” or “Digital”
- Can be extremely valuable
- Placement presents unique challenges

Specialty “Cyber” Insurance Products

- Third-Party Coverage
 - Privacy And Network Security Liability
 - Media Liability
 - Regulatory Liability

- First-Party Coverage
 - Information Asset Coverage
 - Network Interruption And Extra Expense
 - Remediation (Credit Monitoring, Public Relations, Etc.)
 - Cyber Extortion

Specialty “Cyber” Insurance Products

- Privacy And Network Security
 - Typically covers against liability from data breaches, transmission of malicious code, denial of third-party access to the insured’s network, and other network security threats

Privacy And Network Security Example

I. INSURING AGREEMENTS

(A) Data Privacy and Network Security Liability Insurance

We will pay **Damages and Defense Costs** on behalf of the **Insured** which the **Insured** shall become legally obligated to pay as a result of a **Claim** first made during the **Policy Period**, or Extended Reporting Period, if applicable, against the **Insured** alleging a **Data Privacy Wrongful Act** or a **Network Security Wrongful Act**, by the Insured, which takes place during or prior to the **Policy Period**.

Data Privacy Wrongful Act means any negligent act, error or omission by the **Insured** that results in:

- (1) the improper dissemination of **Nonpublic Personal Information**; or
- (2) any breach or violation by the **Insured** of any **Data Privacy Laws**.

Network Security Wrongful Act means any negligent act, error or omission by the **Insured** resulting in **Unauthorized Access** or **Unauthorized Use** of the **Computer System**, the consequences of which include, but are not limited to:

- (1) the failure to prevent **Unauthorized Access** to, use of, or tampering with a **Third Party's** computer systems; or
- (2) the inability of an authorized **Third Party** to gain access to the **Insured's** services; or
- (3) the failure to prevent denial or disruption of **Internet** service to an authorized **Third Party**; or
- (4) the failure to prevent **Identity Theft** or credit/debit card fraud; or
- (5) the transmission of **Malicious Code**.

Any failures, interruptions, suspensions or delays of a **Computer System** that result from the

Privacy And Network Security Example

Nonpublic Personal Information means:

(1) a natural person's first name and last name in combination with any one or more of the following:

(a) social security number;

(b) medical or healthcare information or data;

(c) financial account information that would permit access to that individual's financial account;

or

(2) a natural person's information that is designated as private by a **Data Privacy Law**.

Nonpublic Personal Information does not include information that is lawfully available to the general public.

Privacy And Network Security Example

Data Privacy Laws means any Canadian or U.S. federal, state, provincial, territorial and local statutes and regulations governing the confidentiality, control and use of **Nonpublic Personal Information** including but not limited to:

- (1) Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191) ("HIPAA"); or
- (2) Gramm-Leach-Bliley of 1999 ("G-L-B"), also known as the Financial Services Modernization Act of 1999; or
- (3) State privacy protection laws, including but not limited to the California Database Protection Act of 2003 (Cal. SB 1386) and Cal.Civ.Code § 1798.82, that require commercial **Internet** sites or on-line services that collect personal information or medical information (as defined by such laws or acts) to post privacy policies and adopt specific privacy controls or to notify those impacted by identity or data thief, abuse or misuse; or
- (4) Federal and state consumer credit reporting laws, including but not limited to the Federal Fair Credit Reporting Act (FCRA) and the California Consumer Credit Reporting Agencies Act (CCCRAA); or
- (5) The Fair and Accurate Credit Transaction Act of 2003 (FACTA).

Data Privacy Laws does not include any foreign law, regulation or statute other than the laws and regulations of Canada.

Privacy And Network Security Example

Computer System means computer hardware, software applications and tools (including licensed software), middleware, **Websites**, and related electronic backup, but only if owned or leased, and operated, by the **Insured Entity** and connected to the **Insured Entity's** computer network. **Computer Systems** do not include any computer hardware (including laptops, smart phones, memory devices or personal digital assistants), software applications and tools (including licensed software), middleware, **Websites**, and related electronic backup that are not connected to the **Insured Entity's** computer network.

“Privacy” Example 2

I. INSURING CLAUSES

A. CYBER LIABILITY

The Company shall pay **Loss** on behalf of an **Insured** on account of any **Claim** first *made* against such **Insured** during the **Policy Period** or, if exercised, during the Extended Reporting Period, for **injury**.

Injury means **Disclosure Injury**, **Reputational Injury**, **Content Injury**, **Conduit Injury** or **Impaired Access Injury**.

Disclosure Injury means **injury sustained or allegedly sustained by a natural person** because of the potential or actual unauthorized access to such natural person’s **Record** by another **Person** when such access:

- A. occurs on or after the **Retroactive Date** and before the end of the **Policy Period**; and
- B. **results directly from**:
 - 1. a **Cyber-attack into a System owned by an Insured Organization**; or
 - 2. a natural person who has gained unauthorized access to, or has exceeded authorized access to a **System** or **System Output** owned by:
 - i. an **Insured Organization**; or
 - ii. an organization that is authorized by an **Insured** through a written agreement to process, hold or store **Records** for an **Insured**.

“Privacy” Example 2 (Continued)

Record means a natural person’s first name or first initial, and last name, in combination with:

- A. their social security number, driver’s license number or other personal identification number (including an employee identification number or student identification number);
- B. their financial account number (including a bank account number, retirement account number, or healthcare spending account number);
- C. their credit, debit or payment card number;
- D. any information related to their employment by an **Insured Organization**; or
- E. any individually identifiable health information, pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), held by an **Insured Organization**,

when any of the information in “A” through “E” above is intended by an **Insured Organization** to be accessible only by **Persons** it has specifically authorized to have such access.

“Privacy” Example 3

1. INSURING AGREEMENTS

SECURITY AND PRIVACY INSURING AGREEMENT

The **Insurer** shall pay on an **Insured’s** behalf all **Loss** in excess of the applicable Retention that such **Insured** is legally obligated to pay resulting from a **Claim** alleging a **Security Failure** or a **Privacy Event**.

“**Privacy Event**” means the following occurring on or after the **Retroactive Date** and prior to the end of the **Policy Period**:

- (1) ~~any failure to protect Confidential Information~~ (whether by “phishing,” other social engineering technique or otherwise) including, without limitation, that which results in an identity theft or other wrongful emulation of the identity of an individual or corporation;
- (2) failure to disclose an event referenced in Sub-paragraph (1) above in violation of any **Security Breach Notice Law**; or
- (3) violation of any federal, state, foreign or local privacy statute alleged in connection with a **Claim** for compensatory damages, judgments, settlements, pre-judgment and post-judgment interest from Sub-paragraphs (1) or (2) above.

“Privacy” Example 3 (Continued)

- (d) **“Confidential Information”** means any of the following in a **Company’s** or **Information Holder’s** care, custody and control or for which a **Company** or **Information Holder** is legally responsible:
- (1) information from which an individual may be uniquely and reliably identified or contacted, including, without limitation, an individual’s name, address, telephone number, social security number, account relationships, account numbers, account balances, account histories and passwords;
 - (2) information concerning an individual that would be considered “nonpublic personal information” within the meaning of Title V of the Gramm-Leach Bliley Act of 1999 (Public Law 106-102, 113 Stat. 1338) (as amended) and its implementing regulations;
 - (3) information concerning an individual that would be considered “protected health information” within Health Insurance Portability and Accountability Act of 1996 (as amended) and its implementing regulations;
 - (4) information used for authenticating customers for normal business transactions;
 - (5) any third party’s trade secrets, data, designs, interpretations, forecasts, formulas, methods, practices, processes, records, reports or other item of information that is not available to the general public.

“Network Security” Example 2

1. INSURING AGREEMENTS

SECURITY AND PRIVACY INSURING AGREEMENT

The **Insurer** shall pay on an **Insured’s** behalf all **Loss** in excess of the applicable Retention that such **Insured** is legally obligated to pay resulting from a **Claim** alleging a **Security Failure** or a **Privacy Event**.

“**Security Failure**” means the following occurring on or after the **Retroactive Date** and prior to the end of the **Policy Period**:

- (1) ~~a failure or violation of the security of a Computer System~~ including, without limitation, that which results in or fails to mitigate any unauthorized access, unauthorized use, denial of service attack or receipt or transmission of a malicious code;

~~“Computer System” means any computer hardware, software or any components~~ thereof that are under the ownership, operation or control of, or that is leased by, a **Company** and are linked together through a network of two or more devices accessible through the Internet, internal network or connected with data storage or other peripheral devices.

“Network Security” Example 3

COMPUTER SYSTEM DEFINITION AMENDATORY ENDORSEMENT (CLOUD COMPUTING COVERAGE)

This endorsement modifies insurance provided under the following:

Specialty Risk Protector®
Security and Privacy Coverage Section
Event Management Coverage Section

In consideration of the premium charged, it is hereby understood and agreed that the definition of “**Computer System**” in both paragraph 2(c) of the **Security and Privacy Coverage Section** and paragraph 2(b) of the **Event Management Coverage Section** is deleted in its entirety and replaced with the following:

“**Computer System**” means any computer hardware, software or any components thereof that are linked together through a network of two or more devices accessible through the Internet or internal network or that are connected through data storage or other peripheral devices, and are:

- (1) under the ownership, operation or control of, or leased by, a **Company**; or
- (2) operated by a third party for the purpose of providing hosted computer infrastructure or computing platforms to a **Company** as provided in a written contract between such third party and a **Company**, including, without limitation, cloud computing services provided on an Infrastructure as a Service (IaaS) or Platform as a Service (PaaS) model.

“**Computer System**” does not include any cloud computing services provided on a Software as a Service (SaaS) model or any other application services hosted on a system, infrastructure and platform that is not owned, operated or controlled by a **Company**.

Specialty “Cyber” Insurance Products

- Crisis Management/Remediation
 - Costs associated with post-data breach notification—required by regulation and voluntary notification
 - Credit monitoring services
 - Forensic investigation to determine the existence or cause of a breach
 - Public relations efforts and other “crisis management” expenses
 - Legal services to determine an insured’s indemnification rights where a third party’s error or omission has caused the problem

Crisis Management/Remediation Example

II. EXPENSE COVERAGE EXTENSIONS

(A) Notification and Credit Monitoring Expense Coverage

We will reimburse the **Insured Entity**, for reasonable and necessary **Notification and Credit Monitoring Expenses**, up to the **Sublimit For All Expense Coverages** and in excess of the **Notification Expenses Retention**. **Notification and Credit Monitoring Expenses** must directly result from a **Data Privacy Wrongful Act** which takes place during the **Policy Period**. Coverage for such expenses shall be available regardless of whether a **Claim** has been made under I. **INSURING AGREEMENTS (A)**, provided that notice is given to us as required under the notice provisions set forth in Section VIII. **CONDITIONS, Paragraph E. NOTICE**.

(B) Crisis Management Expense Coverage

We will reimburse the **Insured Entity**, for reasonable and necessary **Crisis Management Expenses** up to the **Sublimit For All Expense Coverages** and in excess of the **Crisis Management Expenses Retention**. **Crisis Management Expenses** must directly result from a **Data Privacy Wrongful Act** which takes place during the **Policy Period**. Coverage for such expenses shall be available regardless of whether a **Claim** has been made under I. **INSURING AGREEMENTS (A)**, provided that notice is given to us as required under the notice provisions set forth in Section VIII. **CONDITIONS, Paragraph E. NOTICE**.

Crisis Management Services means those services performed by any public relations firm, crisis management firm or law firm hired or appointed by us, to minimize potential reputational harm to the **Insured Entity** arising from a **Data Privacy Wrongful Act**, including, without limitation, maintaining and restoring public confidence in the **Insured Entity**, and providing advice to the **Insured Entity** or any of its directors, officers, partners or employees to minimize reputational harm.

Specialty “Cyber” Insurance Products

- Regulatory Liability
 - Many “third-party” cyber risk policies include defense and indemnity coverage for claims for civil, administrative or regulatory proceedings, fines and penalties

Regulatory Liability Example

Data Privacy Regulatory Expense Coverage

We will reimburse the **Insured Entity**, for reasonable and necessary **Data Privacy Regulatory Expenses** up to the Sublimit For All **Expense Coverages** and in excess of the **Data Privacy Regulatory Expenses** Retention which are assessed after the date that the **Insured** reports a covered **Claim** under **I. INSURING AGREEMENTS (A)**.

Such expenses must be incurred by the **Insured Entity** in order to comply with **Data Privacy Laws** including where the **Insured Entity** has been notified that a **Data Privacy Regulatory Proceeding** has been commenced.

Data Privacy Regulatory Expenses means fines or penalties incurred by an **Insured Entity** and assessed in a **Data Privacy Regulatory Proceeding**. **Data Privacy Regulatory Expenses** does not include the offer of courtesy credit monitoring or other expenses that are not required by **Data Privacy Laws** or **Notification Laws**

Solely with respect to a **Data Privacy Wrongful Act**, any monetary assessment, fee, fine or penalty levied against the **Insured Entity** by a **Credit Card Association** and arising out of a contractual obligation between the **Credit Card Association** and the **Insured Entity**, but only for an amount not to exceed the lesser of \$250,000 or the amount set forth on the Declarations in Item 4.

Data Privacy Regulatory Proceeding means a civil, formal administrative or formal regulatory proceeding against an **Insured** by a federal, state or local governmental authority alleging violation of any law referenced under the definition of **Data Privacy Laws**; or a proceeding against the **Insured** by the PCI Standards Council alleging a failure to comply with PCI standards.

Specialty “Cyber” Insurance Products

- Media Liability
 - Typically covers against liability from claims for alleging infringement of copyright and other intellectual property rights and misappropriation of ideas or media content

Media Liability Example

I. INSURING AGREEMENTS

(B) e-Media Liability Insurance

We will pay **Damages** and **Defense Costs** on behalf of the **Insured** which the **Insured** shall become legally obligated to pay as a result of a **Claim** first made during the **Policy Period**, or **Extended Reporting Period**, if applicable, against the **Insured** alleging a **e-Media Wrongful Act**, by the **Insured**, which takes place during or prior to the **Policy Period**.

e-Media Wrongful Act means any negligent act, error or omission by the **Insured** that results in:

- (1) infringement of copyright, service mark, trademark, or misappropriation of ideas or any other intellectual property right, other than infringement of patents or trade secrets; defamation, slander or libel, product disparagement, trade libel, false arrest, detention or imprisonment, or malicious prosecution, infringement or interference with rights of privacy or publicity; wrongful entry or eviction; invasion of the right of private occupancy; and/or plagiarism, misappropriation of ideas under implied contract invasion or other tort related to disparagement or harm to the reputation or character of any person or organization in the **Insured Entity's Electronic Content** or in the **Insured Entity's Advertising**; or
- (2) misappropriation or misdirection of **Internet** based messages or media of third parties on the **Internet** by the **Insured**, including meta-tags, web site domains and names, and related cyber content.

Media Liability Example 2

1. INSURING AGREEMENTS

MEDIA CONTENT INSURING AGREEMENT

The Insurer shall pay on an Insured's behalf all Loss in excess of the applicable Retention that such Insured is legally obligated to pay resulting from a Claim alleging a Wrongful Act.

"Wrongful Act" means any act, error, omission, negligent supervision of an employee, misstatement or misleading statement by an Insured in connection with Material occurring on or after the Retroactive Date and prior to the end of the Policy Period (including without limitation, any of the foregoing conduct in the gathering, collection, broadcast, creation, distribution, exhibition, performance, preparation, printing, production, publication, release, display, research, or serialization of Material by an Insured) that results solely in:

- (1) infringement of copyright, title, slogan, trademark, trade name, trade dress, mark, service mark, service name, infringement of domain name, deep-linking or framing, including, without limitation, unfair competition in connection with such conduct;
- (2) plagiarism, piracy or misappropriation or theft of ideas under implied contract or other misappropriation or theft of ideas or information; including, without limitation, unfair competition in connection with such conduct;
- (3) invasion, infringement or interference with rights of privacy or publicity, false light, public disclosure of private facts, intrusion and commercial appropriation of name, persona or likeness; including, without limitation, emotional distress or mental anguish in connection with such conduct;
- (4) defamation, libel, slander, product disparagement or trade libel or other tort related to disparagement or harm to character or reputation; including, without limitation, unfair competition, emotional distress or mental anguish in connection with such conduct;
- (5) wrongful entry or eviction, trespass, eavesdropping or other invasion of the right to private occupancy, or false arrest, detention or imprisonment or malicious prosecution; including, without limitation, any emotional distress or mental anguish in connection with such conduct;
- (6) negligent or intentional infliction of emotional distress, outrage or *prima facie* tort in connection with Material; or
- (7) Loss because a third party, which has no ownership relationship with any Insured, acts upon or makes a decision or decisions based on the content of the Material disseminated by an Insured or with an Insured's permission.

Media Liability Example 2 (Continued)

“**Material**” means **media content in any form**, including, without limitation, advertising and written, printed, video, electronic, digital or digitized content, of:

- (1) broadcasts, including without limitation, broadcasts via television, motion picture, cable, satellite television, radio, wireless devices or the Internet; or
- (2) publications, including without limitation, publications via newspaper, newsletter, magazine, book and other literary, monograph, brochure, directory, screen play, film script, playwright and video publications.

Specialty “Cyber” Insurance Products

- Information Asset Coverage
 - “First-party” cyber coverage may include damage to or theft of the insured’s own computer systems and hardware, and may cover the cost of restoring or recreating stolen or corrupted data.

Specialty “Cyber” Insurance Products

- Network Interruption And Extra Expense
 - Coverage for business interruption and extra expense caused by malicious code (viruses, worms, Trojans, malware, spyware, etc.), DDoS attacks, unauthorized access to, or theft of, information, and other security threats to networks.

Specialty “Cyber” Insurance Products

- Extortion
 - Cyber policies often cover losses resulting from extortion (payments of an extortionist’s demand to prevent network loss or implementation of a threat)

Specialty “Cyber” Insurance Products

- Complimentary pre- and post-loss risk management services

Specialty “Cyber” Insurance Products

- Other Cyber-Related Insurance Products
 - Technology E&O
 - Coverage for industrial espionage / economic loss of cyber-based theft of intellectual property?

BEWARE.
THE.

FINE.

PRINT.

The slide features a blue background with a bokeh effect of light spots. A solid orange horizontal bar is positioned in the center, containing the title text in white.

V. Purchasing Cyber Insurance

Purchasing Cyber Insurance

- Underwriting Process - Main Factors Driving Premiums - Sales, Industry, Etc.
- System Audit
- Application
- Estimated Premium/Limits/Deductibles
- Carriers

The image features a blue bokeh background with soft, out-of-focus light spots. A solid orange horizontal band is positioned in the center, containing the text. The overall aesthetic is clean and professional.

VI. Tips For A Successful Placement

Tips For A Successful Placement

- Embrace a Team Approach
- Understand the Risk Profile
- Review Existing Coverages
- Purchase Cyber Coverage as Needed
- Remember the “Cyber” Misnomer
- Spotlight the “Cloud”
- Consider the Amount of Coverage
- Pay attention to the Retroactive Date and ERP
- Look at Defense and Settlement Provisions
- Beware the Fine Print

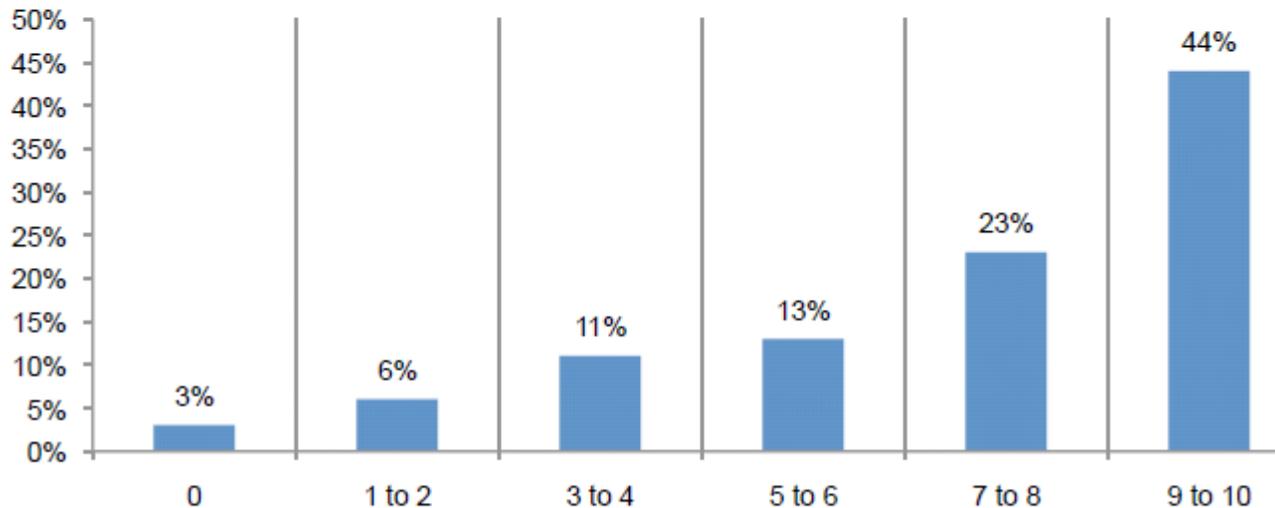
Companies Find Value In Cyber Insurance



The value of cyber security insurance to the organization

Organizations find value in cyber insurance. Most companies with cyber security insurance have had their policies between one and four years. As shown in Figure 5, customer satisfaction runs high with 44 percent of respondents extremely likely to recommend their insurance provider to a friend or colleague.

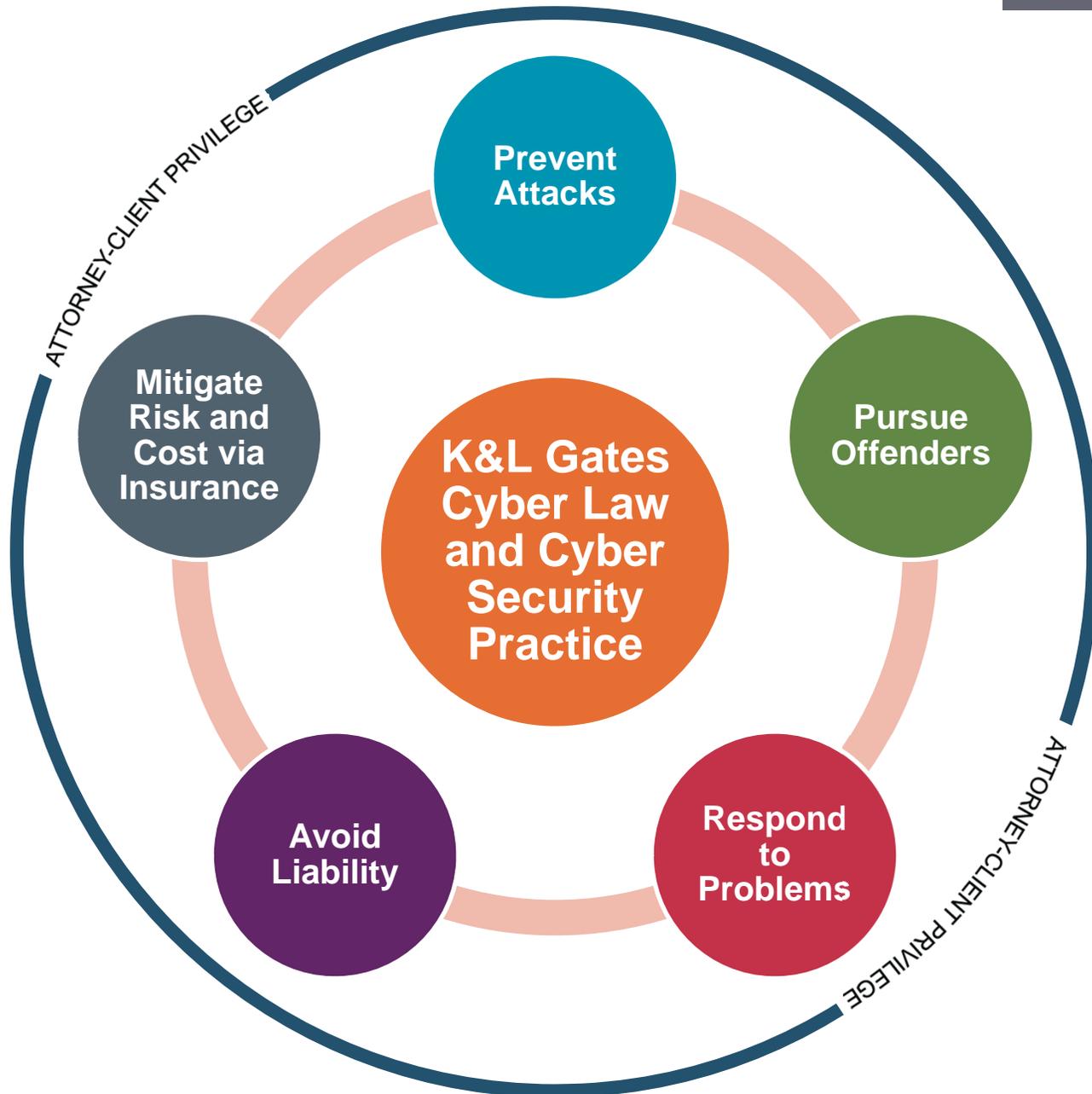
Figure 5. Would you recommend cyber insurance to your friends or colleagues?
 Product recommendations are measured using a 11-point rating from 0 (low) to 10 (high)

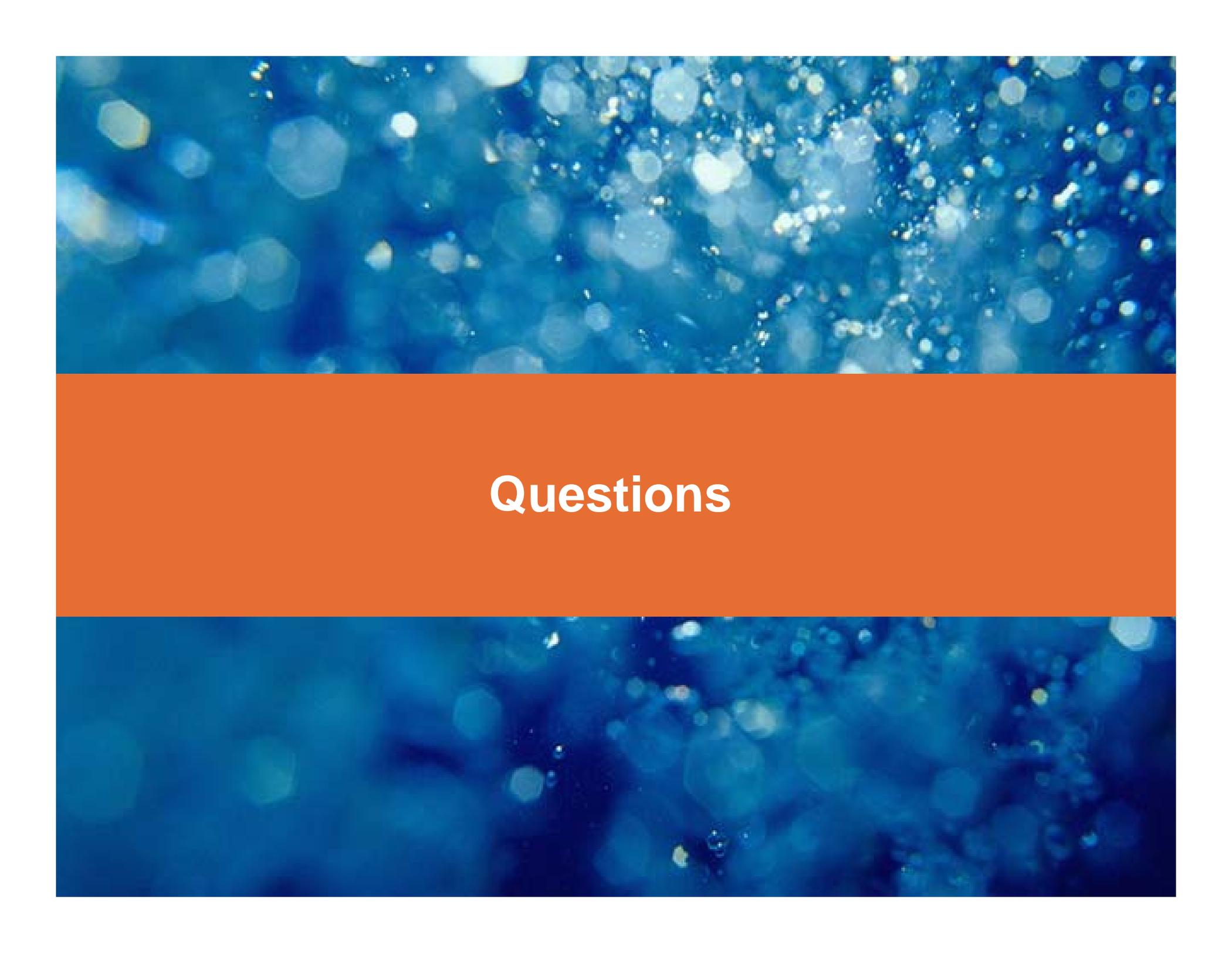


Source: Ponemon Institute, *Managing Cyber Security as a Business Risk: Cyber Insurance in the Digital Age* (August 2013)

The image features a blue bokeh background with out-of-focus light spots. A solid orange horizontal bar is positioned in the center, containing the text 'VII. Where We Can Help' in white, bold, sans-serif font.

VII. Where We Can Help



The image features a blue bokeh background with a central orange band. The bokeh consists of numerous out-of-focus light spots in various shades of blue and white, creating a shimmering effect. The orange band is a solid, horizontal strip that spans the width of the image, positioned in the middle. The word "Questions" is written in white, bold, sans-serif font, centered within the orange band.

Questions

K&L GATES