Companies May Be Covered For Business Interruption or Related Losses Resulting From “Hacker Attacks” And Other E-Commerce Risks

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Some of the Web’s most popular and heavily trafficked sites recently were shut down by so-called “hacker attacks.” Such incidents can lead to substantial financial losses, including lost revenues and profits. In the rapidly growing era of e-commerce, many other companies will be exposed to computer “hacker” and related e-commerce risks. Although e-commerce is still in its early stages of development, and related coverage issues have not to date been frequently litigated, companies nevertheless should be aware that they may have insurance coverage for e-commerce related losses under their traditional property and liability policies.

For example, first-party property insurance policies typically provide coverage for business interruption losses resulting from “direct physical loss of or damage to covered property,” the plain meaning of which may, in some cases, encompass hacker attacks and other Internet-related problems. Moreover, some first-party policies written beginning in the early 1990s explicitly cover disruption, destruction or corruption of any computer data, coding, program or software.

Predictably, however, some insurance industry spokespeople already are seeking to preemptively discourage claims by publicly disavowing coverage under traditional policies for losses resulting from hacker attacks. Such blanket pronouncements by the insurance industry should not be accepted at face value. Rather than relying on such statements, policyholders who have suffered losses from hacker attacks or other e-commerce problems — or potentially may suffer such losses — should carefully consider and consult with coverage counsel about the specific language of their insurance policies and how it may apply to these types of losses.

In addition, a growing list of insurers have sold and are selling policies that are, purportedly, targeted specifically towards losses that may arise in connection with a variety of electronic commerce and other Internet-related activities. Included among these are “Secure Systems,” which provides first-party property coverage, and “Netsecure,” which covers both first-party and third-party losses. Regardless of the insurance industry “spin” regarding these new policies, the policies may in fact merely duplicate coverage that already should be available under the plain terms of existing property or liability policies. Accordingly, although these new policies may be a worthwhile addition to a coverage program, depending on the circumstances, policyholders may wish to consider consulting with coverage counsel prior to making any purchasing decisions.

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