LEGAL RISKS OF E-COMMERCE TELECONFERENCE
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PRESENTATION OVERVIEW

- Internet-related perils
- General Insurance Concerns
- Liability insurance issues
- Property insurance issues
- New Specialty Internet Products

INTERNET & E-COMMERCE RISKS

- CONTENT LIABILITIES
  - IP Risks; privacy issues; disparagement
- ENABLING TECHNOLOGY RISKS
  - IP Risks; antitrust violations; business interruption losses; authentication
- SECURITY BREACHES
  - Business interruption; Theft of property; Invasion of privacy claims

GLOBAL INSURANCE COVERAGE?!

- Global risks: liability claims
- Review coverage territory
- Liability policies providing ad injury coverage sometimes contain coverage territory clauses
- E.g., “Coverage territory means U.S., Puerto Rico and Canada”

KEY LIABILITY POLICIES

- GENERAL LIABILITY / EXCESS FORMS
  - ad injury & personal injury provisions
- UMBRELLA LIABILITY POLICIES
  - expanded definitions of personal & ad injury
- ERRORS & OMISSIONS ("E&O") POLICIES
  - TECHNOLOGY E & O POLICIES
  - MEDIA E & O POLICIES
- SPECIALTY INTERNET POLICIES

ADVERTISING INJURY COVERAGE

- Oral or written publication of material that slanders or libels or disparages goods, products, services
- Oral or written publication of material that violates person's privacy
- Misappropriation of advertising ideas or style of doing business; or
- Infringement of copyright, title, slogan

Content Claims & Security Risks

- INSURANCE FOR:
- Invasion Of Privacy claims
- Ad Injuries: copyright, trademark, domain names, and style of doing business claims
- Erosion of coverage???

“PUBLICATION”???

- COULD BE ON A WEBSITE;
- COULD BE ONE ON ONE SOLICITATION
- COULD BE IN A STORE
- COULD BE ON A POSTER
- DOESN’T NECESSARILY HAVE TO BE IN A BOOK, MAGAZINE OR LITERATURE WITH A LARGE CIRCULATION

"PERSONAL INJURY" OVERLAP

- DEFINED IN PERTINENT PART TO MEAN:
- "ORAL OR WRITTEN PUBLICATION OF MATERIAL THAT SLANDERS OR LIBELS A PERSON OR DISPARAGES A PERSON'S GOODS, PRODUCTS, SERVICES;"
- ORAL OR WRITTEN PUBLICATION OF MATERIAL THAT VIOLATES PERSON'S RIGHT OF PRIVACY"

New York Law on "Advertising"

- NY not generally favorable to policyholders
- But, NY courts have broadly construed what constitutes "advertising" for purposes of ad injury coverage
- Significant for duty to defend under GL policies

Computer Crime Policies

- Hacker & Virus Claim Coverage: "Loss resulting directly from the malicious destruction of, or damage to, Electronic Data or Computer Programs. . . ."
- Fear of reporting claim?
  - Adverse publicity risk
  - Delay / failure to report : risks under time-sensitive policy provisions

New Internet Insurance Products

- Lots of new products for Internet and E-commerce risks: Lloyds', AIG and others
- Untested: Is language broad enough?
- Is integration seamless?
  - -more specialty policies makes gaps in program a real possibility
- Investigate claims environment with brokers under the new products

Covered Perils

(a) "Digital Asset Loss"

- e.g., costs to retrieve data and bring it back online;

(b) "Cyber Extortion Threat"

- like K&R insurance

(c) "Security Failure Notification Loss"

- for costs informing customers/public of security breach

(d) Time-element coverage

- business income & contingent business income loss.

Exclusions (aka “the fine print”)

- Blackouts, brownouts, breakdowns;
- Internet or Website outages;
- Failure to maintain system;
- Viruses;
- Software/programming errors

More Catches

- Conditions requiring:
  - (a) Due diligence;
  - (b) Claim Notifications
  - (c) Protection & maintenance
  - (d) Concealment/Fraud
  - (e) Arbitration
  - (f) Suit Limitation