

RICHARDS BUELL SUTTON

Discussing cyber liability with Nicole Mangan

Lawyer Nicole Mangan is a partner at the law firm Richards Buell Sutton. She has a particular interest in cyber liability. “So many businesses and organizations are collecting personal information on people these days,” she observes. “What if that information is leaked, either through negligence or through



Mangan

a criminal act by somebody who hacks into your system? These risks can come from people both inside and outside of an organization.”

Mangan points out that data

breaches can “arise in a number of different ways,” providing a couple of typical examples that can affect both the business community and the general public.

“You never know when you’re going to be hacked,” she says. “Just as you never know when you’re going to have an employee who accidentally releases information for which a business might be vicariously liable.

“Take the example of phishing e-mails where somebody tries to pass themselves off as representing your bank or another business you deal with. Almost everyone today has a story of receiving those fake emails – some of which can look very legitimate.”

Negligence is one thing. But, as Mangan explains, deliberate criminal activity in today’s high-tech world is a growing problem. And one incident involving either negligence or a criminal act can sometimes impact an unusually high volume of victims with the potential to constitute a large-scale claim.

It’s this potential for theft or unintended publication of a high volume of information that can have a direct effect on the insurance industry. “Let’s say that an affected individual has a hypothetical claim for damages of \$200,” says Mangan.

“If you multiply that by thousands of people who can potentially be impacted by one breach, the scope of the claim can be very significant for an insured.

“For a broker, the vast majority of their business clients are storing valuable

cyber liability coverage with clients and the potential importance of that kind of coverage,” she observes. “Cyber liability is so widely talked about in the industry now. If a broker has never mentioned the potential products to a client, the client

might say: ‘How come we never discussed this risk?’”

What can a business person do to protect themselves? “First of all, make sure that you have good technical advice on the security of your system and the corresponding security of your information. That can be important in terms of trying to show that your company did everything it could to ensure that the information wasn’t jeopardized in the first place.

“Second, work with your broker to make sure that you have the right coverage.

“Third, if anything does happen, make sure you act as quickly as possible to re-secure your

system and to comply with notifying any regulatory bodies or individuals. Often, if the insured mitigates the risk by acting quickly, that can help in terms of your defence regarding liability.”

However, since regulations on cyber liability vary from province to province, “complex jurisdiction issues can arise.” So you want to make sure you’re getting advice that applies to the specific rules you have to comply with, whether they’re provincial or federal.

“Brokers are really on the front lines when it comes to calls from their clients who think they may need to make an insurance claim,” concludes Mangan. “They frequently play a key role in knowing what policies their client has and getting the insurer notified.” **IP**



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personal information in some way,” she explains. “Often when an insurance claim happens, a business broker is their first point of contact.”

Mangan feels that the security of personal information is an increasing concern for both the business and insurance communities. “What happens if an employee takes their unsecured laptop on a business trip and loses it, or a hospital accidentally uploads patient information to the Internet?” she asks. “Now you may have a whole bunch of information that – just due to inadvertence – is potentially at risk, which could result in a class action claim.”

Education is the key here, both for the broker and his client. “For a broker, it’s important to review the options for