



LOEB & LOEB adds Depth.

INSURANCE COVERAGE FOR COMPUTER-RELATED LOSSES

Peter S. Selvin

February/March 2011

The author describes how various kinds of computer-related losses might or might not be covered by two major categories of insurance: traditional products, such as comprehensive general liability (CGL) policies, and newly available “cypber-liability” policies.

In determining whether loss of computer data is covered under a traditional first- party policy, a key issue is whether the incident is construed as direct loss or damage to property. Courts have split on the issue, so jurisdiction and policy details become important considerations.

For third-party (or liability) coverage, the author cites cases that have gone both ways. A data consultant who lost a data tape was covered, while a software vendor whose product caused loss of data was not. In one case, coverage was found where an insured party’s advertising infringed a competitor’s intellectual property rights.

In 2001, the standard CGL insurance form was revised to exclude electronic data from the definition of covered property. In 2004 the insurance industry introduced new forms of coverage that specifically addressed “data liability.” However, it’s important to bear in mind that many policies still in effect are not bound by these forms.

New policies now exist that specifically address risks related to information technology. Companies evaluating these products should consider such issues as coverage limits, exclusions and what specifically will trigger



LOEB & LOEB adds Depth.

business interruption coverage.

Even if electronic data is excluded from the definition of “property,” verify coverage for loss of use of computer hardware.

Peter Selvin is a partner in Loeb & Loeb LLP's Litigation Department. He is a trial lawyer whose practice is focused on complex commercial, financial and corporate disputes; insurance coverage and bad faith litigation; and international litigation and arbitration. He can be reached at pselvin@loeb.com or at 310.282.2059.

This article was first printed in the February/March 2011 edition of *Executive Counsel*. Permission for article reprint has been granted.

This publication may constitute "Attorney Advertising" under the New York Rules of Professional Conduct and under the law of other jurisdictions.

© 2011 Loeb & Loeb LLP. All rights reserved.